

# **Zoning, Fire Protection, and Building Code Regulations**

**For the Town of Cherry Creek**

**Chautauqua County, New York**

**Adopted:**

**February 13, 2023**

# TABLE OF CONTENTS

## PART I

## TOWN ZONING REGULATIONS

	<u>Page</u>
<b>ARTICLE</b>	<b>I <u>Title, Enacting Clause &amp; Purpose</u> ..... 6</b>
Section	101 Title .....6
	102 Enacting Clause.....6
	103 Purpose .....6
	104 Application of Regulations .....6
<b>ARTICLE</b>	<b>II <u>Interpretations &amp; Definitions</u> ..... 8</b>
Section	201 Language, Interpretations .....8
	202 Definitions .....8
<b>ARTICLE</b>	<b>III <u>Establishment of Districts</u> ..... 18</b>
Section	301 Creation & Enumeration of Districts ..... 18
	302 Zoning Map ..... 18
	303 Interpretation of Boundaries ..... 18
<b>ARTICLE</b>	<b>IV <u>District Regulations</u> ..... 20</b>
Section	401 Agricultural – Residential 1 (AR1) ..... 20
	402 Business – Light Industry (B-1) ..... 21
	403 Residential Only (R1) ..... 22
	404 Groundwater Protection Overlay District (GP) ..... 23
<b>ARTICLE</b>	<b>V <u>General Provisions</u> ..... 31</b>
Section	501 Access to Public Street ..... 31
	502 Contiguous Parcels ..... 31
	503 Corner Lots ..... 31
	504 Height ..... 31
	505 Existing Substandard Sized Lot ..... 31
	506 Visibility ..... 32
	507 Interpretation of Permitted Uses ..... 32
	508 Fences & Walls ..... 32
	509 Topsoil ..... 33
	510 Maintaining Lot Areas ..... 33
	511 Established Front Yards ..... 34
	512 Storage Structures ..... 34
	513 Farm Animals in the R1 and or B1 Districts..... 34
	514 Temporary Permits for Mobile Homes..... 35
	515 Mobile Homes and Manufactured Home Standards..... 36

<b>ARTICLE</b>	<b><u>VI Supplemental Regulations</u></b>	<b>38</b>
Section	601 Cluster Residential Development	38
	602 Gravel & Sand Operations	40
	603 Oil & Gas Wells	41
	604 Private Swimming Pool	41
	605 Off-street Parking	42
	606 Loading and Unloading	43
	607 Signs	43
	608 Regulation of Junk Cars, Heavy Vehicles & Trash	47
	609 Service Stations	47
	610 Garage & Lawn Sales	48
	611 Unsafe Buildings	48
	612 Recreational Vehicles – Accessory Use	49
	613 Mobile Home Parks	50
	614 Travel Trailer Camps (Commercial Campgrounds)	51
	615 Maintenance of Front Yards	51
	616 Private Camps	51
	617 Tree Tops & Flooding	52
	618 Vehicular Dismantling & Scrap Yards	52
	619 Gas Compressors, Generators and Related Equipment	56
	620 Sludge & Sewage Operations	59
	621 Communication Towers	60
	622 Adult Entertainment Facilities	66
	623 Manufactured Home Conditions	68
	624 Wind Energy Conversion Systems	69
	625 Small Scale Solar Energy Systems	86
	626 Commercial Solar Energy Production Systems	86
	627 Trash Storage in Residential Yards	90
	628 Storage Containers	91
	629 Cannabis Dispensaries	92
<b>ARTICLE</b>	<b><u>VII Administration by Code Enforcement Officer</u></b>	<b>93</b>
Section	701 Enforcement	93
	702 Duties of Code Enforcement Officer	93
	703 Building Permits	95
	704 Schedule of Fees	96
	705 Issuance of Appearance Tickets	96
<b>ARTICLE</b>	<b><u>VIII Nonconforming Uses</u></b>	<b>97</b>
Section	801 Continuation	97
	802 Unsafe Structures	97
	803 Alterations	97
	804 Prior Approved Construction	97
	805 Restoration	97
	806 Abandonment	97
	807 Displacement	97
	808 District Change	98

	809 Nonconforming Signs.....	98
	810 Nonconforming Yards.....	98
	811 Use Changes .....	98
<b>ARTICLE</b>	<b><u>IX Zoning Board of Appeals</u></b> .....	<b>99</b>
Section	901 Creation .....	99
	902 General Procedures .....	99
	903 Interpretations.....	99
	904 Use & Area Variances .....	99
	905 Mandatory Referrals .....	100
<b>ARTICLE</b>	<b><u>X Planning Functions of the Zoning Board of Appeals</u></b> .....	<b>101</b>
Section	1001 Reserved .....	101
	1002 Duties .....	101
	1003 Special Use Permits .....	101
	1004 Mandatory Referrals .....	104
<b>ARTICLE</b>	<b><u>XI Amendments by the Town Board</u></b> .....	<b>105</b>
Section	1101 Procedure .....	105
	1102 Mandatory Referral .....	105
	1103 Referral to the Zoning Board of Appeals .....	105
<b>ARTICLE</b>	<b><u>XII Violations &amp; Penalties</u></b> .....	<b>106</b>
Section	1201 Violations .....	106
	1202 Penalties .....	106
<b>ARTICLE</b>	<b><u>XIII Legality</u></b> .....	<b>107</b>
Section	1301 Conflicts .....	107
	1302 Separability .....	107
	1303 Repealer .....	107
	1304 Effective Date .....	107
<b>PART II</b>	<b><u>FIRE PROTECTION AND BUILDING CODE</u></b>	
	<b><u>REGULATIONS</u></b>	
Section	1 Purpose and Intent.....	108
	2 Definitions.....	108
	3 Code Enforcement Officer and Inspections.....	111
	4 Building Permits.....	112
	5 Construction Inspections.....	113
	6 Stop Work Orders.....	114
	7 Certificates of Occupancy and Compliance.....	115
	8 Notification Regarding Fire or Explosion.....	117
	9 Unsafe Buildings or Structures and Conditions of Imminent Danger.....	117
	10 Operating Permits.....	117
	11 Fire Safety and Property Maintenance Inspections.....	120

12	Complaints.....	122
13	Climatic and Geographic Design Criteria.....	123
14	Record Keeping.....	123
15	Program Review and Reporting.....	124
16	Violations.....	124
17	Fees.....	127
18	Intermunicipal Agreements.....	127
19	Partial Invalidity.....	127
20	Effective Date.....	127

**PART I: ARTICLE I  
TITLE, ENACTING CLAUSE, PURPOSE**

**SECTION 101**                      **Title**

A Local Law regulating the location, construction and use of buildings, structures, and the use of land in the Town of Cherry Creek, County of Chautauqua, State of New York, and for said purposed dividing the Town into districts. This Local Law shall be known and cited as the Zoning Law of the Town of Cherry Creek.

**SECTION 102**                      **Enacting Clause**

Pursuant to the authority conferred by Article 16 of the Law of the State of New York and for each of the purposes specified therein, the Town Board of the Town of Cherry Creek, County of Chautauqua and the State of New York, has ordained and does hereby enact the following Local Law regulating and restricting the location, size and use of buildings and other structures, and the use of land in the Town of Cherry Creek.

**SECTION 103**                      **Purpose**

The zoning regulations and districts herein set forth and outlined upon the zoning map are made in accordance with a comprehensive plan for the purpose of promoting the public health, safety, morals, convenience, order, prosperity, and general welfare of the community. They have been designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to provide adequate provision of transportation, public utilities, schools, parks; and other public requirements. They have been made with reasonable consideration, among other things, as to the character of each district and its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

**SECTION 104**                      **Application of Regulations**

Except as hereinafter provided:

A. No building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.

B. No building shall hereafter be erected or altered:

1. to accommodate or house a greater number of families;
2. to occupy a greater percentage of lot area, or
3. to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.

C. No part of a yard or other open space about any building is required for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building.

D. Health Department Rules – the regulations of the State and County Health Departments with respect to water supply and sewage disposal facilities will apply. The applicant for a building or zoning permit must obtain a copy of the required health department permits for attachment to his application, before the issuance of local approval by the building or zoning inspector.

E. Multiple Residence Law – For all dwellings with three or more dwelling units or any dwelling two or more stories in height with five or more roomers, the “Multiple Residence Law,” Chapter 61B of the Consolidated Laws, sets forth certain requirements with regard to fire safety, size of rooms, and other minimum health and safety specifications.

F. Building Code – No building shall be erected or altered unless it complies with any building code which has been adopted by the Town of Cherry Creek.

G. Subdivision Laws – State and existing local subdivision laws must be complied with, in addition to this zoning law.

H. The final responsibility for the conforming of buildings and use to the requirements of this law shall rest with the owner or owners of such building or use and the property on which it is located.

I. No building or buildings shall be erected in the Town which will limit the usefulness or depreciate the value of surrounding property.

J. No entry or exit from a public road shall be constructed prior to the developer contacting the appropriate highway department to coordinate the project. Applicable jurisdictional laws must be followed.

**ARTICLE II  
DEFINITIONS**

**SECTION 201                      Language & Interpretations**

For the purpose of this Local Law certain terms or words herein shall be interpreted or defined as follows: Words used in the present tense include the future tense. The singular included the plural. The word "person" includes a corporation as well as an individual. The word "lot" includes the word "plot" or "parcel." The term "shall" is always mandatory. The word "used" or "occupied" as applied to any land or building shall be construed to include the word "intended, arranged or designed to be used or occupied."

**SECTION 202                      Definitions**

Certain words and terms used in this Local Law are defined as follows:

**ACCESSORY BUILDING OR USE** – An accessory building or use is one which:

- Is subordinate to and serves a principal building or principal use.
- Is subordinate in area, extent or purpose to the principal building or principal use served.
- Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served.
- Is located on the same lot as the principal building or principal use served.
- Signs, home occupations, and farm stand are permitted only as accessory uses. The words "accessory uses" shall apply to uses accessory to uses permitted in the particular subsection (either Uses Permitted by Right or Uses Permitted by Special Exception) of this Local Law in which it is found.

**ADVERTISING SIGN STRUCTURE** – Any outdoor sign including those signs already described in Section 607(c) and (f), which display information on uses, events, goods, products, services or facilities offered at location other than on the tax lot where the sign is located. The words "advertising sign" include the word "billboard".

**AGRICULTURE LIMITED** – The production of crops, plants, vines and trees, provided no odor or dust is produced within 100 feet of any building or adjacent property.

**ALTERATION** – Is as applied to a building or structure, a change or rearrangement in the structural parts, or in the exit facilities, or an enlargement, whether by extending on a side or increasing in height, or moving from one location or position to another; the term "alter" in its various modes and tenses and its particular form, refers to the making of an alteration.



APARTMENT HOUSE – A building arrangement, intended or designed to be occupied by three (3) or more families living independently of each other.

AUCTION – A public sale event at which goods are sold to the highest bidder. An auction may be held on any given lot biannually.

BUILDING – Any structure having a roof supported by columns or by four independent, nonparty walls and intended for the shelter, housing, or enclosure of person, animals, or chattel. Mobile homes are considered buildings for the purposes of this definition.

BUILDING AREA – The total of areas taken on a horizontal plan at the main grade level of the principal buildings and all accessory buildings exclusive of uncovered porches, terraces, and steps. All dimensions shall be measured between the exterior faces of walls.

CODE ENFORCEMENT OFFICER – Inspects and maintains the building construction of the Town Zoning Law and the New York State Uniform Fire and Building Code.

BUILDING LINE – A line formed by the intersection of a horizontal plane of average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

BUILDING PERMIT – Written approval by the Code Enforcement Officer in accordance with this Zoning Law to construct or alter a structure or use a parcel of land in a specified way.

BUILDING SETBACK LINE – An established line within a property defining the minimum required distance between the face of any structure to be erected and the right-of-way line in an adjacent highway.

CAMP – See Travel Trailer Camp.

CLUB – An organization catering exclusively to members and their guests including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing they are not conducting any vending stands, merchandising or commercial membership and purposes of such club.

COMMUNICATION TOWER - any structure designed for the support of any device for transmitting and/or receiving signals for the purpose of communication, including but not limited to broadcast, short wave, citizens band, AM radio, FM radio, television, microwave, cellular, digital or personal communication devices.

CUSTOMARY HOME OCCUPATION – A use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. Such use also conforms to the following conditions:

- Not more than one-third of the floor area of one story of principal building is so used.
- No nonresidents are employed.
- Only customary household appliances and equipment is used.
- There is no outside display of commodities.
- No advertising except as allowed by Section 607.
- No offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced.
- Examples of acceptable uses include art studio, dressmaking, musical instruction to a single pupil.
- Sufficient off-street parking in accordance with Section 605.

CUSTOMARY ACCESSORY BUILDING – See Accessory Building.

DISPLAY FACE – The portion of the sign structure carrying the advertisement.

DUPLEX – a building arranged, intended, or designed to be occupied by two (2) families living independently of each other.

DWELLING UNIT – One (1) or more rooms within a building providing living facilities, including equipment and provision for cooking for a single household including one (1) or more persons living as a family.

EATING AND DRINKING ESTABLISHMENTS – Places where food and/or beverages are prepared and/or sold for consumption on the premises or for take-out, including restaurant, tea rooms, cafeterias, bars, taverns, and lunchrooms.

EQUESTRIAN CENTER – A facility designed and purpose built for the stabling of horses which includes sufficient exercise paddocks, show arenas, seating for spectators, parking for vehicles and trailers and tack rooms. The facility will also have a comprehensive plan for waste management and storm water runoff. The facility will provide for adequate storage of grain, hay and bedding materials with preventative measures for rodent control.

ESSENTIAL SERVICES – The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies, of gas, electrical, steam, water, sewage, and communication systems, and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an essential service.

FAMILY – One (1) or more persons, related by birth, marriage, or other domestic bond, occupying a dwelling unit and living as a single non-profit housekeeping unit.

FIRE INSPECTOR – Inspects and maintains the fire and life safety of New York State Uniform Fire and Building Code.

FLOOD OR FLOODING – Means a general and temporary condition of partial or complete inundation or normally dry land areas from (1) the overflow of streams, rivers, or other

inland areas of water; or (2) abnormally rising lake waters resulting from severe storms or hurricanes.

**FLOOD INSURANCE BOUNDARY MAP** – The official map from the Federal Insurance Administration by each community that has a flood hazard problem.

**FLOOD PLAIN** – A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation, or any area subject to the usual and rapid accumulation or runoff or surface waters from any source.

**FLOODPROOFING** – Means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

**FLOOD PROTECTION ELEVATION** – Means the level and elevation above which a particular use will be considered safe from flooding. Such estimates are updated with the 100-year flood elevation. Such elevations will be designated at various points on the official map.

**FLOODWAY** – The designated area of a flood plain required to carry and discharge waters of a given magnitude.

**FLOODWAY FRINGE AREA** – The designated area of a flood plain adjacent to the floodway and within the 100-year special flood hazard area.

**FLOOR AREA TOTAL** – The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the inside face of exterior walls; or from the centerline of walls separating two (2) uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

**GARAGE, DETACHED PRIVATE NON-ACCESSORY** (“Detached private non-accessory garage”) – Means a stand-alone building designed or used primarily for the shelter or storage of vehicles or boats, but not airplane, that is not accessory to a single-family or duplex residence on the same building site. Where any vehicles or boats are equipped for operation, repaired or kept for remuneration, hire or sale, the term “private garage” does not apply. This term shall not include agricultural buildings.

**GARAGES, PRIVATE** – A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

**GARAGES, PUBLIC** – Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, including the supply of gasoline and oil.

**HIGHWAY ACCESS POINT** – The distance between any vehicular entrance or exit to the street.

HOME FOR AGED – A structure principally used to house senior citizens in which a separate household is established for each family. Nursing homes are not considered to be a home for aged.

HOME OCCUPATION – See Customary Home Occupation.

JUNK YARD – The use of more than 100 square feet of the area of any lot for the collecting, storage or sale of waste paper, rags, scrap metal, salvaged machines or appliances or similar materials as interpreted by the Zoning Board of Appeals. Additionally, the collecting, dismantling, storage or salvaging of more than two (2) automobiles which are not registerable or capable of passing a state safety inspection.

LOT – Any parcel of land occupied, or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Zoning Law.

LOT, AREA – An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres.

LOT, COVERAGE – That percentage of the lot area which is devoted to building area. District regulations refer to the maximum percentage of the lot area devoted to building area.

LOT LINE – Any dividing one lot from another.

LOT WIDTH – The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

LOW DENSITY LIGHT INDUSTRY – This district is designed to accommodate a wide range of light manufacturing and related uses which conform to a high level of performance standards. Manufacturing establishments of this type, within completely enclosed buildings on a relatively large landscaped lots will be situated in selected areas on State and County highways throughout the Town in a manner which will be consistent with present land uses in the Town.

MOTOR VEHICLE SERVICE STATION – Any area of land, including structures therein, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means, body and fender work, or the dismantling or replacing of engines.

MOBILE HOME – A transportable single-family living quarters suitable for year-round occupancy. Mobile homes contain the same utility systems (water, waste and electricity) as found in conventional immobile housing. Mobile homes are supported by a frame which is an integral part of the unit. Mobile homes are not designed to be lived in except

when set up on a lot with proper utilities. Both double wide mobile homes shall be referred to or treated as conventional dwelling units. Also, "Tiny Homes", "Park Models" or miniature versions of mobile homes that are also transportable on a frame shall be treated as a Mobile Home under Town zoning.

**MOBILE HOME PARK** - Real property under single ownership that is used as the location for three or more manufactured mobile homes that are , or are intended to be, occupied as dwellings on a full or part time basis, and upon which lots are not conveyed nor conveyable.

**MOTOR HOMES** - A self-propelled relatively small temporary living quarters and are generally used as mobile vacation homes. Motor homes generally have self-contained independent utility systems. This includes recreational vehicles (R.V.'s).

**MUNICIPALITY** - Shall mean the Town of Cherry Creek.

**NONCONFORMING USE** - That use of a building, structure or land legally existing at the time of enactment of this Zoning Law and which is not one of those permitted in the district in which it is situated.

**OFFICE** - A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer or person providing similar services or in whose office the functions of consulting, record keeping, and clerical work are performed.

**ONE HUNDRED YEAR FLOOD** - The waters of a flood that on the average is likely to occur once 100 years.

**OPEN SPACE** - Common, or public, or private greens, parks, or recreations areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossings and drainage control areas, golf courses, swimming pools, tennis courts, ice skating rinks, and other similar recreational uses, but which may not include such activities which produce noise, glare, odor, air pollution, fire hazards, or other safety hazards, smoke, fumes, or any use or activity which is operated for profit, or other things detrimental to existing or prospective adjacent structures or to existing or prospective development of the neighborhood.

**PARKING SPACE** - A required off-street parking space shall be an area of not less than one hundred and sixty-two (162) square feet nor less than eight and one-half (8 ½) feet wide by nineteen (19) feet long, exclusive of access drives or aisles, ramps, columns, or office and work areas, accessible from streets, or alleys, or from private driveways or aisles leading to streets or alleys and to be used for the storage or parking of passenger automobiles or commercial vehicles under one and one-half (1 ½) ton capacity. Aisles between vehicular parking spaces shall not be less than twelve (12) feet in width when serving automobiles parked at forty-five (45) degree angles in one direction nor less than twenty (20) feet in width.

PRIVATE CAMP – A parcel of land utilized on a seasonal basis for recreation purposes. All other zoning restrictions apply to private camp.

PUBLIC – Owned, operated, or controlled by a governmental agency (Federal, State or Local) including corporation created by law for the performance of certain specialized governmental functions, a public school district, or a service district.

REGULAR FLOOD INSURANCE PROGRAM OR REGULAR PROGRAM – The permanent program which is entered only after detailed flood information is provided by the Federal Insurance Administration; e.g. Floodway/Floodway Fringe Area, Flood Insurance Rate Map.

RESIDENCE, SINGLE-FAMILY DETACHED – A detached building designed to contain one (1) dwelling unit.

RESIDENCE, TWO-FAMILY – Either of the following:

1. A building have two (2) side yards and accommodating but two (2) dwelling units, with one family living over the other.
2. A detached building containing two (2) dwelling units separated by a party wall, each having one (1) side yard.

RESIDENCE, MULTI-FAMILY – A building used or designed for three (3) or more dwelling units including apartment houses and town houses.

SECTION – Unless otherwise noted section and section numbers shall refer to this law.

SEMI-PUBLIC – Places of worship, institutions for the aged and children, nurseries, nonprofit colleges, hospital, libraries, cemeteries, and institutions of a philanthropic nature. Also, open space.

SIGN – Any structure or part thereof, attached thereto, or painted, or represented thereon which shall display or include any letter, word, model, banner, flag, pennant, insignia, devise of representation used for the purpose of bringing the subject thereof to the attention of the public. The word sign does not include the flag, pennant or insignia of any nation, state, city, or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious, or like organizations, or the property thereof.

SIGN, ADVERTISING – Any outdoor sign, including those signs already described in Section 607 (C) and (D), which display information on uses, events, goods, products, services or facilities offered at location other than on the tax lot where the sign is located. The words “advertising sign” include the word “billboard”.

SIGN, AREA – The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed four (4) sided (straight sides) geometric shape which most closely outlines the said sign. Only one (1) side of a sign shall be used in measuring the area.

SIGN, BUSINESS - A sign for permitted use conducted on the premises which shall identify

the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises or otherwise call attention to the use conducted on the premises.

**SIGN, IDENTIFICATION** – A sign for permitted use conducted on the premises or for articles sold or distributed by that use, or displaying the name of the premises.

**SIGN, INSTRUCTIONAL** – Any sign conveying instructions with respect to the use of the premises or a portion of the premises on which it is maintained or a use or practice being conducted on the premises.

**SIGN, NAMEPLATE** – Any sign attached directly to the wall of a building occupied by the person to who such signed indicated the name, occupation and/or address of the occupant. A nameplate shall not be over two (2) square feet in size.

**SIGN, TEMPORARY** - A sign which offers premises for sale, rent, or development; or announces special events or call attention to new construction or alteration; or offers a sale of seasonal garden produce, garage, household, porch items or signs of similar nature; or political signs. Temporary status of signs will expire after ninety (90) days.

**SPECIAL USE PERMIT** – A Special Use Permit deals with special permission, granted only by the Zoning Board of Appeals to occupy land for specific purposes when such use is not permitted by right, but is listed as permitted by Special Use Permit.

**SPECIAL FLOOD HAZARD AREA** – Means that maximum area of the flood years (i.e., that has a one (1) percent change of being flooded each year – “100-Year Flood”).

**STORAGE BUILDING, NON-ACCESSORY** (“non-accessory storage building”) – Means a structure used for storage of belongings, not accessory to a single-family or duplex residence located on the same building site, not designed for human habitation, and not used for remunerative purposes. This term shall not include agricultural buildings.

**STORAGE CONTAINER** – An enclosed container other than an accessory building commonly used in intermodal transportation for the storage of goods, including but not limited to shipping containers, cargo containers, truck bodies, semi trailers and detached enclosed trailers and obsolete school buses. The location of a storage container must meet fifty (50) foot setback requirements and are only permitted on lots of two (2) acres or more in size pursuant to a Special Use Permit as set forth in Section 628 Storage Containers.

**STORAGE CONTAINER, TEMPORARY** – An enclosed container used for the storage of goods, residential belongings or building materials during moving, construction or renovations. The container must be located to comply with setback requirements and placed in such a manner as to minimize adverse impact to neighboring properties. The container can be placed without permit for a total of sixty (60) days in any one calendar year. The container will be removed immediately at the end of the sixty (60) days or sooner if it is no longer necessary.

**STORY** – That portion of a building included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** – A story under a gable, hip or gambrel roof, the wall plates of which, on at least two (2) opposite exterior walls, are not more than two (2) feet above the floor of such story.

**STRUCTURE** – A building constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

**SUBSTANTIAL IMPROVEMENT** - Is defined as any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the case value of the structure either (1) before the improvement is started or (2) if the structure has been damaged and is being restored, before the damage occurred.

**TOWN HOUSE** - A dwelling unit designed to be occupied as a residence for one (1) family and one (1) group of three (3) or more attached dwellings, placed side by side, separated by walls, each containing one (1) or two (2) stories, and each having separate front and rear, or side and rear, or front and side entrances from the outside.

**TRACT** – A large piece of land under single ownership and developed or to be developed as a single entity for two (2) or more units of use.

**TRAVEL TRAILER CAMP – COMMERCIAL CAMPGROUND** – A parcel of land used or intended to be used, let or rent on a seasonal basis for occupancy by campers or for occupancy by or of travel trailers, motor homes, tents or movable or temporary dwelling, rooms or sleeping quarters of any kind. Such a parcel shall be a minimum of 100 acres and shall be subject to conditions set forth by the Zoning Board of Appeals in accordance with Section 614.

**USE** – Any purpose for which land or a building is designed, arranged, intended or for which it is, or may be occupied or maintained.

**VARIANCE** – Permissive waivers from the terms of the law, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the law will result in unnecessary hardship or practical difficulty so that the spirit of the law shall be observed and substantial justice done and granted by the Zoning Board of Appeals.

**YARD, FRONT** – The area extending across the entire width of the lot between the building line, or front main wall of a building and the front right-of-way line (where right-of-way is unknown, a line twenty-five (25) feet from the center of improved portion on Town of Cherry Creek roads and a line of thirty-five (35) feet from center of improved portion of State and County roads) and into which space there shall be no extension in building partitions in any district.



**YARD, REAR** – The area extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for the parking, loading and unloading space, and garages and carports.

**ZONING BOARD OF APPEALS** – Shall mean the Zoning Board of Appeals for the Town.

**ARTICLE III  
ESTABLISHMENT OF DISTRICTS**

**SECTION 301                      Creation & Enumeration of Districts**

For the purpose and provision of this Local Law, the Town of Cherry Creek is hereby divided into the following types of districts:

Residential	(R-1) Yellow on map
Agricultural-Residential 1	(AR-1)
Business-Light Industrial	(B-1) Pink corridor on map
Groundwater Protection Overlay District	(GP)

**SECTION 302                      Zoning Map**

The boundaries of the aforesaid zoning districts are hereby established as shown on the map entitled "Zoning District Map of the Town of Cherry Creek, New York", dated October 29, 2022, which map accompanies and is made part of this Local Law and shall have the same force and effect as if the zoning map, together with all notations, references, and other information shown thereon, were fully set forth and described herein.

**SECTION 303                      Interpretation of District Boundaries**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines, or highway right-of-way lines shall be construed to be such boundaries.

B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

C. Where district boundaries are so indicated that they are approximately parallel to the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.

D. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of jurisdiction of the Town unless otherwise indicated.

E. Any flood boundary shown on the zoning map indicated general location only. The precise location of flood plain boundaries shall be established by the Code Enforcement Officer after consulting with the Chautauqua County Planning Board.

F. Any party aggrieved by an interpretation may appeal to the Zoning Board of Appeals, whose decision will be final. However, all decisions of the Zoning Board of Appeals are subject to court reviews in accordance with applicable laws of the State of New York. The burden of proof shall be on the appellant.

**ARTICLE IV  
DISTRICTS**

**SECTION 401                      Agricultural-Residential District (AR1)**

A. Uses Permitted by Right:

- Single-Family Dwelling House
- Duplex (Two-Family) Dwelling
- Agricultural Uses
- Outdoor Storage of One of Each of the Following:
  - Camper, Cargo Trailer, Boat, Boat Trailer. Each must be owned for personal use by a resident on the premises.
- Garage When Accessory to Family Dwelling
- Storage Structure Accessory to Family Dwelling
- Customary Accessory Building or Uses in Accordance with Definition in Section 202.
- Public Uses (e.g., Library, Schools, Civic Building, Highway Building, etc.)
- Essential Services and Supporting Structures (e.g., utility lines, and utility support buildings)
- Parking Spaces in accordance with Section 605.
- Oil & Gas wells in accordance with Section 603.

B. Uses Permitted by Special Use Permit:

- Auction
- Multiple Family Apartments
- Mobile Home Park in accordance with Section 613
- Customary Home Occupation in accordance with definition in Section 202
- Private Camp in accordance with definition in Section 202
- Travel Trailer Camp (Same as Commercial Campground) in accordance with Section 202
- Garage, detached private non-accessory
- Gravel & Sand Extraction in accordance with Section 202
- Churches or similar Place of Worship, Parish Houses, Rectories
- Swimming Pools in accordance with Section 604
- Cemetery
- Undertaking Establishment
- Golf Course
- Cluster Residential Development in accordance with Section 601
- Mobile Homes in conjunction with the erection of a single-family or multiple-family dwelling unit in accordance with Section 515
- Communication Towers
- Storage building, non-accessory

Parking space(s) in a designated FRONT YARD as set forth in Section 202  
 Definitions including any enveloping wall, fence or hedge around the  
 parking space(s)

Rodeo  
 One Day Auction  
 Commercial Solar Energy Production Systems  
 Storage Container

C. Area Standards\*:

	Municipal Sewers	
	<u>Without</u>	<u>With</u>
Minimum Lot Size (Acres)	2	1/4
Minimum Lot Width (Feet)	200	60
Maximum Lot Cover(% of Lot Area)	40%	45%
Minimum Front Yard (measured from right-of-way in feet)	100	30 **
Minimum Rear Yard (Feet)	75	30
Minimum Side Yard (Feet)	50	15
Maximum Stories	2 ½	2 ½
Minimum First Floor Space for Each Dwelling Unit (Square feet)***	240	240

Note: \* Area Standards apply to all listed uses unless other standards are  
 specified in other section of this Law.

\*\* Or commensurate with neighboring homes

\*\*\* Minimum square footage estimated to accommodate "tiny homes"

**SECTION 402                      Business District (B-1)**

A. Uses Permitted by Right:

All uses allowed in AR1 District by right (Section 401)

B. Uses Permitted by Special Use Permit:

Stores and Shops Conducting Retail Business  
 Nursing Homes  
 Housing for the Elderly  
 Restaurants and other places serving food or beverages  
 Day Care Centers  
 Banks  
 Office Buildings  
 Barber Shops and Beauty Parlors

Gas Stations  
 Multiple Family Dwelling Units  
 Home Occupations  
 Swimming Pools in accordance with Section 604  
 Cemetery  
 Cluster Residential Development in accordance with Section 601  
 Auction

C. Area Standards

	Municipal Sewers	
	<u>Without</u>	<u>With</u>
Minimum Lot Size (square feet)	15,000	10,000
Minimum Lot Width (feet)	100	80
Maximum Lot Cover (% of lot area)	60%	60%
Minimum Front Yard (measured from right-of-way in feet)	25	25
Minimum Rear Yard (feet)	20	20
Minimum Side Yard (feet)	15	15
Maximum Stories	2 ½	2 ½

**SECTION 403                      Residential Only District (R1)**

A. Uses Permitted by Right:

Single-Family Dwelling House  
 Duplex (Two-Family) Dwelling  
 Outdoor Storage of One of Each of the Following:  
     Camper, Cargo Trailer, Boat, Boat Trailer. Each must be owned for personal use by a resident on the premises.  
 Garage When Accessory to Family Dwelling  
 Storage Structure Accessory to Family Dwelling  
 Customary Accessory Building or Uses in Accordance with Definition in Section 202.  
 Public Uses (e.g., Library, Schools, Civic Building, Highway Building, etc.)  
 Essential Services and Supporting Structures (e.g., utility lines, and utility support buildings)  
 Parking Spaces in accordance with Section 605.

B. Uses Permitted by Special Use Permit:

Multiple Family Apartments  
 Mobile Home Park in accordance with Section 613  
 Customary Home Occupation in accordance with definition in Section 202  
 Garage, detached private non-accessory

Churches or similar Place of Worship, Parish Houses, Rectories  
Swimming Pools in accordance with Section 604  
Cemetery  
Undertaking Establishment  
Golf Course  
Cluster Residential Development in accordance with Section 601  
Mobile Homes in conjunction with the erection of a single-family or multiple-family dwelling unit in accordance with Section 515  
Communication Towers  
Storage building, non-accessory

C For Area Standards see Section 401, C. With Municipal Sewers

**SECTION 404 Groundwater Protection Overlay District (GP)(See also map document dated 11/2/2022)**

A. Statement of Intent

The purpose and intent of the Groundwater Protection Overlay District is, in the interest of public health, safety and general welfare, to preserve the quality and quantity of the Town's groundwater resources (wells) in order to ensure a safe and healthy drinking water supply. This is to be accomplished by regulating land uses which might contribute to the contamination of any aquifer identified as necessary for the present and future water supply of the residents of the Town of Cherry Creek.

B. General Scope and Authority

The Groundwater Protection Area shall be considered as overlaying other zoning districts. Any uses permitted in the portions of the districts so overlaid shall be permitted subject to all the provisions of the protection area. In any cases where conflicts arise between these supplemental regulations and any other existing regulations, the more restrictive regulations shall apply.

The boundaries of the Groundwater Overlay District reflects the best hydrogeologic information available as of the date of the map. Boundary delineation does not imply that specific hydrogeologic testing has been performed or that specific information is available. Rather, it indicates that 1) based on best estimates and professional judgment these areas are more critical to protect and 2) require stricter standards than outlying areas. Where these bounds are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where the boundaries should be properly located. At the request of the owner(s), the Town may engage a professional geologist, hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology to determine more accurately the location and extent of an aquifer or recharge area, and may charge the owner(s) for the entire cost of the investigation.

C. Establishment and Delineation of Groundwater Protection Areas

For the purposes of this protection area, there are hereby established within the Town of Cherry Creek, certain groundwater protection areas which consist of any aquifer, the land above such aquifer, and the aquifer's most significant recharge areas as follows:

Zone I: Primary Protection Zone (Aquifer zone on mapping mapped in gray)

The Primary Protection Zone, as delineated, shall include those permeable geologic deposits that allow surface water, either from streams or precipitation, to enter into the aquifer flow system.

Zone II: Secondary Protection Zone (Groundwater Protection Buffer mapped in pink)

The Secondary Protection Zone is identified as the watershed areas tributary to the deltas comprising Zone I. As delineated, these areas shall include land outside the aquifer area that may contribute runoff overland and/or through surface streams for groundwater recharge.

Zone III: Tertiary Protection Zone (Watershed Area mapped in purple)

The Tertiary Protection Zone, as delineated, shall include all land comprising the watershed that feeds the primary protection zone aquifer designated as Zone 1.

D. Permitted Uses in Groundwater Protection Areas

The following uses are permitted within the Groundwater Protection Areas provided that all necessary permits, orders or approvals required by local, state, or federal law shall have been obtained:

1. Zones I, II and III: Primary, Secondary and Tertiary Protection Zones

All uses currently permitted under the Zoning Law of the Town of Cherry Creek are permitted in the Groundwater Protection Overlay Districts subject to the provisions of this Section.

2. Nonconforming Uses

Notwithstanding any other provision herein, a nonconforming use within the Groundwater Protection Area may be continued and maintained so long as it remains otherwise lawful. No such use shall be enlarged, altered, extended, or operated in any way which increases its threat to groundwater quality or otherwise contravenes with the purpose and intent of this Section.

In the event that a nonconforming use has ceased for a consecutive period of one (1) year or eighteen (18) months during any three (3) year period, such nonconforming use may not be resumed except in conformity with the provisions of all districts within which it is located.



## E. Restrictions and Requirements in Groundwater Protection Areas

### 1. Prohibited Uses and Activities

a. The discharge, land application or disposal of any hazardous material, toxic substance or radioactive material is prohibited in all three zones.

b. The production procession of bulk quantities of any hazardous material or toxic substance is prohibited in all three zones.

c. The open storage of pesticides, herbicides, fungicides and artificial fertilizers within seventy-five (75) feet linear distance of any watercourses in Zone III is prohibited.

d. The dumping or disposing of snow or ice collected offsite from roadways, or parking areas is prohibited in Zone I; dumping or disposing of snow or ice collected offsite from roadways or parking areas is prohibited within one hundred (100) feet of any watercourse in Zone II.

e. The bulk storage of coal or chloride salts is prohibited in Zones I and II except in a water-tight ventilated structure constructed on an impervious surface. Any outside area used for loading, handling, or mixing shall be designed so as to prevent seepage and runoff from entering the groundwater or any watercourse.

f. Any form of underground injection of hazardous materials or toxic substances is prohibited in all three zones.

g. Gas stations are prohibited in Zone I; gas stations are prohibited within Zone II within fifty (50) feet of any watercourse and are subject to review and approval by the Chautauqua County Health Department; gas stations are subject to review and approval by the Chautauqua County Health Department in Zone III.

h. Solid waste disposal facilities and junkyards are prohibited in Zone I; these activities are subject to review and approval by the Chautauqua County Health Department in Zones II and III and must be in compliance with all New York State Department of Environmental Conservation rules and regulations.

i. The minimum lot size for single-family and two-family houses, or houses with ten (10) or fewer people, and a flow of less than 1,000 gallons per day shall be 87,120 square feet (2 acres); all septic systems must comply with Article IV of the Sanitary Code of the Chautauqua County Health Department and requires the review and approval of the Chautauqua County Health Department.

j. The use of septic system cleaners which contain toxic substances or hazardous material is prohibited in all three zones.

k. The disposal of toxic substances or hazardous materials by means of discharge to a septic system is prohibited in all three zones.

l. The spreading of sewage sludge is prohibited in Zone I: in Zone II the spreading of sewage sludge is prohibited in accordance with Section 621 of the this (Cherry Creek) Zoning Law.

m. All permitted industrial and commercial uses are subject to review by the Town of Cherry Creek.

2. Other Requirements for Groundwater Protection Zones

a. Petroleum Bulk Storage Facilities installed above and below ground require permits and are subject to compliance with those standards described under 6 NYCRR Parts 612, 613, and 614 as administered by the New York State Department of Environmental Conservation and in compliance with Chautauqua County Sanitary Code.

b. Bulk storage of toxic substances or hazardous material is subject to compliance with 6 NYCRR Parts 595, 596 and 597 as administered by the New York State Department of Environmental Conservation and Section 603 of this Zoning Law.

c. Quarries, gavel mining and excavations are permitted in accordance with 6 NYCRR Part 420 and the State Environmental Quality Review Act as administered by the New York State Department of Environmental Conservation and Section 603 of this Zoning Law; all on-site activities of these operations are subject to the provision of Section 405 herein; mining and excavation activities must be reviewed and exhibit that appropriate protective measures will be taken and may be permitted upon special approval of the Town of Cherry Creek.

All mining activities may be subject to a review by the Chautauqua County Health Department.

Operations which commence on or after the effective date of these regulations shall install a minimum of one (1) groundwater monitoring well in a direction up gradient from on-site activities. The specific location of these groundwater monitoring wells shall be determined by a professional geologist, hydrogeologist, hydrogeologist engineer, or other qualified expert trained and experienced in hydrogeology.

Frequency of required water quality sampling from monitoring wells shall be determined on a site-specific basis.

Access to monitoring wells shall be provided to employees of the Town of Cherry Creek for purposes of any additional water quality sampling deemed appropriate.

d. Vehicular servicing, including but not limited to, automotive repair stations, body shops, car washes, rust proofing operations, dealerships and maintenance garages and barns, is allowed within the Groundwater Protection Areas provide that the following requirements are met:

i. Floor drains must be connected to a holding tank or sanitary sewer

equipped with an oil and grit separating tank;

ii. Wastes collected in a holding tank must be disposed of through a licensed water hauler;

iii. Waste degreasing solvents must be stored in drums or a holding tank and disposed of through a licensed waste hauler;

iv. Waste oil must be stored properly in tanks or drums for disposal by a licensed waste hauler;

v. Storage facilities for tanks and/or drums require coated concrete floors and dikes to retain accidental spills or leaks; a permanent roof to protect tanks or drums and to prevent precipitation from entering dikes. Drums should be sealed, and tanks and drums must be located away from floor drains;

vi. Large drip pans should be kept beneath drums which have spigots and are stored in horizontal positions on racks;

vii. Potentially contaminated scrap including but not limited to scrap parts, batteries and used filters shall be stored in proper containers to prevent environmental release of contaminants;

viii. Activities must be in compliance with the State Drinking Water Act Underground Injection Control Regulations.

e. Application of pesticides, herbicides, fungicides or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer and in accordance with Chautauqua County Soil and Water Conservation District and Soil Conservation Service recommended best management practices.

Property owners who enlist the services of a commercial pesticide, fungicide, or herbicide applicator shall ensure that the applicator is certified and licensed by the New York State Department of Environmental Conservation.

This provision applies also to golf courses and farms.

f. Conversion of a one-family house using a septic tank to a two-family house using a septic tank requires the approval of the Chautauqua County Health Department.

g. Site plans for all proposed industrial and commercial uses shall be accompanied by a detailed and complete description of the anticipated uses and their operations.

h. Dry wells connected to drains from buildings must comply with Safe Drinking Water Act Underground Injection Control regulations and require approval from the Town of Cherry Creek; floor drains must also comply with these regulations if

applicable.

i. Storm water management plans must be developed in accordance with federal and state regulations.

j. Activities which have potential to contaminate groundwater in the Groundwater Protection Areas must have contingency plans approved by the Town of Cherry Creek and must ensure these plans are easily accessible to appropriate personnel and that copies of plans have been distributed to appropriated emergency entities.

k. Parking lots and other large impermeable surfaces which may impede recharge of groundwater are restricted in Zone I and subject to review by the Chautauqua County Health Department.

l. Oil and gas wells in all zones must comply with all applicable New York State Department of Environmental Conservation requirements, including drilling, maintenance and closure, and must be in accordance with Section 603 of this Cherry Creek Law.

m. Whenever there is a question as to the groundwater contamination potential of a proposed use, the expert opinion of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, and the State and County Health Departments may be requested.

#### F. Special Permits in Groundwater Protection Areas

Any use of property within the Groundwater Protection Areas shall be permitted only upon obtaining a special permit from the Town of Cherry Creek when the use:

1. Violates or does not meet any of the provisions of Section 405 herein; or:
2. Is a development, other than residential, or real property exceeding [\$500,000.00] in development cost; or:
3. Is a use that anticipates an average daily on-site water consumption exceeding [1,000] gallons per day (gpd).

#### G. Application for Special Permit in Groundwater Protection Areas

All applicants for a special permit to develop in the Groundwater Protection Areas shall submit the following:

1. Name, address and telephone number of the applicant.
2. If the applicant is a corporation, the name, address and telephone number of all the corporate officers and directors.
3. A map and report showing the location of the premises for which the permit is

sought and plan prepared by a licensed professional engineer or architect showing all features of the system necessary for the satisfactory conveyance, storage, distribution, use and disposal of sanitary wastes, storm water wastes, process wastes, toxic substances and hazardous materials, solid wastes and incidental wastes within the property boundaries of the business or commercial establishment.

4. When the use of toxic substances or hazardous materials averages an amount equal to or in excess of 55 liquid gallons per month or 500 pounds of dry weight per month, the applicant must provide for any design features, operating plans, and any other protection measures as the Town of Cherry Creek deems appropriate and sufficient to prevent and/or monitor groundwater contamination especially in the event of a potential leak or spill of these substances and must develop a contingency plan.

a. When the use of toxic substances or hazardous materials averages less than 55 liquid gallons per month or 500 pounds of dry weight per month, and when the project is determined to have a potential negative impact on groundwater quality, the Town of Cherry Creek, may demand the applicant provide for any and all design features, operating plans, contingency plans and/or such other protection measures as per this Section.

5. When storage of toxic substances or hazardous materials at any one time is equal to or exceeds a total of 220 liquid gallons or a total of 2000 pounds dry weight, the applicant must provide for any and all design features, operating plans, contingency plans and such other additional protection measures as the Town of Cherry Creek may require to prevent and/or monitor and/or remediate groundwater contamination especially in the event of a potential leak or spill of these substances.

a. When storage of toxic substances or hazardous material at any one time is less than a total of 220 liquid gallons or a total of 2000 pounds of dry weight, the Town of Cherry Creek may demand the applicant to provide for any and all design features, operating plans, contingency plans and such other additional protection measures as per Section 405.

6. Such other nonproprietary information as the Town of Cherry Creek shall request in order to have all facts before it prior to making their decision.

7. Copies of any applications to permits from any other government agencies.

8. List of all toxic substances or hazardous material known to be used or stored on the premises together with sufficient detail to appraise the Town of Cherry Creek of the method of storage and the amount of toxic substances or hazardous materials on the premises.

9. Method of disposal of toxic substances or hazardous materials.

10. A full report regarding the use and storage of all toxic substances and all hazardous materials.

## H. Requirements of Water Well Drillers

All water well drillers must submit a uniform well log as per the specifications of the Chautauqua County Health Department; permits, to be issued by the Chautauqua County Health Department, are required of drillers to ensure receipt of this date. The information required by in the well logs is as follows:

1. types of sediments and the order in which encountered;
2. depth of well;
3. depth to water table;
4. location of well;
5. pumping rate;
6. water quality of well water;
7. problems encountered

**ARTICLE V  
GENERAL PROVISIONS**

**SECTION 501**                      **Access to Public Street**

Except as otherwise provided for in this Local Law, every building shall be constructed or erected upon a lot, or parcel of land which abuts upon a public street unless a permanent easement of access to a public street was of record prior to the adoption of this Law.

**SECTION 502**                      **Contiguous Parcels**

When two (2) or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in the ownership, they shall be used as one lot for such use.

**SECTION 503**                      **Corner Lots**

Both street sides of a corner lot shall be treated as front yards in the application of bulk and area requirements.

**SECTION 504**                      **Height**

A. The height limitation of this Law shall not apply to church spires, belfries, cupolas, penthouses, and domes, not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks, bulkheads, similar features, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area 20 percent of the ground floor area of the building.

B. The provisions of this Law shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than five (5) feet.

**SECTION 505**                      **Existing Substandard Sized Lots**

The minimum area requirements specified for each type of allowed use shall not prevent the construction of an allowable use on a substandard sized lot which existed and was officially recorded at the time of enactment of this zoning law if the following conditions are met:

A. The substandard lot is not less than seventy-five (75) percent of all the applicable standards, and

B. The Chautauqua County Health Department approves the lot.

C. If (A) cannot be met but (B) has been accomplished, then the applicant can request an Area Variance from the Zoning Board of Appeals (see Variances – Section 904).

**SECTION 506**                      **Visibility**

On a corner lot in any residential district no fence, wall, hedge, or other structure or planting more than three (3) feet in height shall be erected, placed, or maintained within the triangular area formed by the intersection lines and a straight line joining the center lines at points measured fifty (50) feet along each center line from their point of intersection. The requirements of this Section shall not be deemed to prohibit the construction of any necessary retaining wall.

**SECTION 507**                      **Interpretation of Permitted Uses**

When a use is not specifically listed as a “Use by Right” or a “Use by Special Exception” within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the Zoning Board of Appeals that said use is similar to permitted uses and not inherently a nuisance, menace, or danger to the health, safety or welfare of the residents of the Town.

**SECTION 508**                      **Fences and Walls**

Fences and walls shall be allowed in accordance with the following conditions:

A. Height – Except as otherwise provided in this Zoning Law, fences, or walls shall be permitted in any district, but not to exceed the following heights: Seven (7) feet where located anywhere behind the front wall of the principal building; four (4) feet in front of the front wall, and subject to conformance with Article V, Section 501, Visibility at Intersections.

B. Location and standards – In all cases (exempting agricultural fencing for livestock) fences, hedges and walls shall be located on or within the property and must be setback a minimum of one (1) foot from the property line. The finished side of the fence or wall must face the closest neighboring property. The fence or wall shall be fixed permanently in the ground to insure its stability.

C. Fire Hazard – Any fence or wall which may cause a fire hazard or a dangerous condition shall be prohibited. This does not include customary farm fencing used for limited agricultural activities.

D. Maintenance – All fences will be maintained in such a manner that they will not devalue adjacent properties or cause unsafe conditions. Fences shall be both structurally sound and visually maintained.

E. Screening - Any use which is adjacent to a residential district and is deemed to be



offensive to existing or allowed residential uses shall be buffered by either a solid fence, hedge, or other appropriate method as determined by the Zoning Board of Appeals.

**SECTION 509**                      **Topsoil**

A person, firm, or corporation shall not strip, excavate, or otherwise remove topsoil for use other than on the premises unless it is replenished or sufficient amount are left to support future development needs and shall be replaced or replenished within six (6) months of completion of the project. No stripping, excavation, or other removal of topsoil shall be such that steep slopes are created, groundwater runoff is trapped, or caused to flow onto adjacent properties or erosion is caused.

**SECTION 510**                      **Maintaining Lot Areas**

A. Maintenance of yards, courts, and other open spaces – The maintenance of yards, courts, and other open space and the minimum lot area legally required for a building shall be a continuing obligation of the owner of such building or of the property on which it is located, as long as the building is in existence. Furthermore, no legally required yards, courts, or open spaces, nor minimum lot area allocated to any building shall, by virtue of change of ownership or for any other reason be used to satisfy yard, court, other open space, or minimum lot requirements for any other building.

B. Division of Zoning Lots – No zoning lot improved with a building or buildings shall hereafter be divided into two (2) or more zoning lots and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting for each such division or sale and improved with a building or buildings shall not be less conforming to all the bulk regulations of the zoning district in which the property is located.

C. Location of Required Open Space – All yards, courts, and other open spaces allocated to a building or dwelling group shall be located on the same zoning lot as such building or dwelling group.

D. Required Yards for Existing Buildings – Yards now or hereafter provided for a building existing on the effective date of the initial adoption of the Town of Cherry Creek Zoning Law may be reduced by application to the Zoning Board of Appeals for an Area Variance.

E. Permitted Obstruction in Required Yards – The following shall not be considered to be obstructions when located in the required yards specified:

1. In All Yards – Open terraces not over four (4) feet above the average level of the adjoining ground but not including a permanently roofed-over terrace or porch; awnings and canopies; steps, four (4) feet or less above grade, which are necessary for access to a permitted building, or for access to a zoning lot from a street or alley; chimneys projecting eighteen (18) inches or less into the yard; recreational and laundry drying equipment; arbors and trellises and flag poles; open fire escapes may extend into yard four

feet six inches (4'6").

2. In Front Yard – one (1) story bay windows projecting three (3) feet or less into the yard; and overhanging eaves and gutters projecting three (3) feet or less into the yard.

3. In Rear Yards – Enclosed, attached or detached off-street parking spaces; open off-street parking spaces; necessary sheds, tool rooms, and similar buildings or structures for domestic or agricultural storage, balconies; breezeways and open porches; one (1) story bay windows projecting three (3) feet or less into the yard; overhanging eaves and gutters projecting three (3) feet or less into the yard. No accessory buildings shall be nearer than ten (10) feet to any principal building unless attached.

4. In Side Yards – Overhanging eaves and gutters projecting into the yard for a distance not exceeding forty (40) percent of the required yard width, but in no case exceeding thirty (30) inches.

**SECTION 511                      Established Front Yards**

In an existing neighborhood where structures are not setback from the right-of-way, the distance specified by this Law, it shall be determined by the Code Enforcement Officer what appropriate setback will be permitted by new construction or by alterations to existing structures in order to aesthetically blend with existing adjacent structures. The varied setback will be based on the average of the setbacks of the two (2) adjacent structures minus up to five (5) feet. Any variation requested which is in greater variation than that permitted by this rule will require an Area Variance.

**SECTION 512                      Storage Structures**

A storage structure shall generally, be permitted in all districts. However, the following regulations shall apply to these structures:

A. Size – All storage structures regardless of size require a building permit.

B. Yard Requirements – If a storage structure is to be accessory to a primary dwelling unit, the yard requirements for the appropriate district will be met whenever it is reasonably possible. If the deviation from the yard requirements is greater than fifty (50) percent, the Code Enforcement Officer shall assist the applicant in determining an appropriate location which considers, among other things, the potential effects of neighboring properties.

**SECTION 513                      Farm Animals in the Residential (R-1) or Business (B-1) Districts**

Traditional farm animals may be maintained within the Business District (B-1) and or Residential (R-1) provided the following criteria are met: Approval shall only be granted if there are no other outstanding Zoning Law, building code nor Town Law violations that apply to the resident or property where animals are meant to be kept

and that the property where the animals are to be kept is a minimum of 3 acres in size. Residents that choose to keep farm animals in these Districts shall also be bound by the criteria below:

A. Animals shall be fenced at least 100 feet from the road frontage of the parcel so as not to be visible from the public roadway.

B. All fences shall be esthetically pleasing and set back a minimum of 2 feet from property lines.

C. Fences must be maintained and in good working condition and may be inspected by Town Code Enforcement officer.

D. Manure from animals shall be removed from the Residential and or Business District weekly and shall be disposed of in an appropriate location.

E. Any combination of animals are eligible to be kept provided they do not exceed the following maximums per acre enclosed: (animals not listed will be evaluated by Town Officials on a case by case basis.) *(Note, animal limit totals are not additive. In other words 3 enclosed acres does not qualify a resident to maintain 3 horses and 6 emu, and 6 Turkeys for example.)*

- Poultry, 12
- Turkey, 2
- Ostrich/Emu, 2
- Llama/Alpaca, 1
- Swine, goat, sheep, 1
- Cattle, buffalo, horse, 1

## **SECTION 514**

### **Temporary Permits for Mobile Homes**

A Temporary Special Use Permit for a mobile home may be applied for from the Zoning Board of Appeals in conjunction with the construction of single or multiple-family dwelling units.

The request must include, in addition to all information needed for any Special Use Permit, a time schedule for commencement and completion of the dwelling unit. As a minimum, construction on the dwelling unit shall begin within one (1) year from the date when the mobile home is placed temporarily on the lot. Additionally, the mobile home shall be removed within three years from the date that it was first placed on the lot, at which time the dwelling unit shall be livable.

The placement of the mobile home on the lot shall be in accordance with area standards unless the Zoning Board of Appeals determines that such conforming placement would not be practical, in which case the conditions will be specified.

Upon application by the landowner, the Zoning Board of Appeals may grant extensions of time up to a maximum of two (2) years for completion of the dwelling provided the landowner (applicant) can show a good faith effort in completing construction of the dwelling unit.

Definition – For the purpose of this amendment the word “unit” shall be defined to refer to a “Mobile Home” or a “Manufactured Home”.

### **SECTION 515                            Mobile Home and Manufactured Home Standards**

**Unit size and construction** – The basic dwelling unit must conform to NYSFP & BC Chapter D., Article 2 1210.1 through 1222.3 (Reference).

**Septic System** – Each unit must have its own septic system approved by the Chautauqua County Board of Health. An approved Board of Health application must accompany the required building permit and become part of the permit when issued.

**Installation and Skirting** – Installation must conform to (Reference) NYSFP & BC, Chapter D., Article 3, 1223.1 through 1223.7B. Skirting is to be of painted galvanized metal, aluminum siding, vinyl siding or masonry and the metal of vinyl is to be similar in appearance to the unit. The skirting must be installed within sixty (60) days of placement of the unit on site.

**Unit Insulation** – The following minimum insulation standards set forth by Niagara Mohawk Power Corp., National Fuel Gas Corp., and New York State Fire Prevention and Building Code.

Roofs or ceiling	U = 0.05 R-19
Exterior walls	U = 0.07 R-14
Floors over unheated area	U = 0.08 R-11
Glazing – windows and sliding glass doors	U = 0.69 (Single glazed with storms)
Entrance doors	U = 0.40 (Solid wood with storm or Insulated door)
Heating ducts exposed in unheated areas	U = -.20 R-5

**Electric Standards** – All wiring within the unit shall meet UL standards for the mobile home industry and have a legible UL label. The service entrance cable shall be solid bonded from the meter to the distribution box within the unit and must have at least a 100 amp. service panel. All connections between the meter and the unit distribution box shall be approved mechanical cable connectors. All convenience outlets, wall or ceiling, must be wired with three conductor cable not smaller in size than #12. Prior to occupancy a certificate of compliance as issued by the underwriters local inspector as to service entrance, convenience outlets and distribution panel capacity must be presented to the Code Enforcement Officer.

**Fire Code Compliance** – Each unit must be equipped with at least one smoke

detector per bedroom, one per common living area, and at least one CO detector or combination unit, all of which must also be in compliance with NYSFP & BC Chapter B, 1060.2 through 1060.2C-3.

**Additions** – Any addition to the basic unit, either attached or separate from, must be similar in appearance and quality to the basic unit and requires a building permit. A mobile home may be used as a separate living unit and not attached to any existing dwelling as an addition. (Reference) NYSFP & BC Chapter D 1223.7A & 7B.

**Certification** – The seller must provide to the purchaser of a unit intended for placement within the township, a notarized certificate stating that the unit complies with all listed standards of the Town of Cherry Creek Zoning. This certification must be attached to and become part of the building permit.

**Amendment Review** - This entire group of amendments to the present Zoning Law shall remain in force for a period of three (3) years and then be reviewed by the Town Board and after proper advertisement, a public hearing is to be held and a vote taken at the next Town Board meeting to rescind or extend these amendments for an additional period of four (4) years, with the same procedure to be repeated every four (4) years.

**Compliance** – Should any noncompliance be evident to the Code Enforcement Officer upon his inspection of the placement of the unit on the site, he must insure compliance or prompt removal of the unit after advising the owner in writing.

References

NYSFP & BC – New York State Fire Prevention & Building Code

ULC – Underwriters Laboratory Code

TGZL – Town of Cherry Creek Zoning Law

**ARTICLE VI  
SUPPLEMENTAL REGULATIONS**

**SECTION 601**

**Cluster Residential Development**

A. Purpose – The purpose of the procedures, standards, and controls of the cluster residential development is to provide a means to take advantage of natural physical features of an area by permitted reductions in bulk and area requirements for individual of open space ancillary to dwelling units.

B. Procedure:

1. Application for establishment of cluster residential development shall be made to the Code Enforcement Officer. The Code Enforcement Officer shall refer the application to the Zoning Board of Appeals for consideration.

2. The Zoning Board of Appeals shall require the applicant to submit documentation indicating conformance to all design and improvements required by this law. Such documentation shall include but not limited to the following:

a. Overall development plans drawn to scale showing: exact size, shape, and location of lot to be built upon. Kind, location, occupancy capacity of structures, bulk and uses; general floor plan of buildings; location and identification of open spaces, streets, and all other means for pedestrian and vehicular circulation, parks, recreation areas and other non-building sites; provisions for automobile parking and loading including size, arrangement, and number of spaces and placement of lighting standards; general landscape plan; general location and nature of public and private utilities (including underground utilities) and other community facilities and services (including maintenance facilities).

The applicant shall include such other pertinent information as the Zoning Board of Appeals shall prescribe.

The movement of all vehicles and ingress and egress drives for all off-street parking and loading areas (both front and rear) to insure the prevention of blockage of vehicles entering and leaving the site; preliminary architectural and engineering sketches showing plan levels, elevation, landscape plan and any other necessary information related to water runoff control, slope, contours, type of building, etc.; area to be utilized for storage of materials and type of architectural screen to be used.

Such other information as may be required by the Zoning Board of Appeals to determine their recommendation or decision.

b. Written statement of: facts concerning the suitability of the site, the proposed density, the location and proposed uses and facilities for development in

accordance with the provision of this law.

Purposes showing proposed provisions to be made for services, maintenance and continued protection of the cluster and planned unit development and adjoining territory.

Disposition of open-space lands and provision for maintenance and control of the open-space land, financial responsibility for such open-space land must be clearly indicated.

Phasing of construction or timing regarding each development area.

The applicant shall include such other pertinent information as the Zoning Board of Appeals shall prescribe.

3. In reaching its decision on the proposed development, the Zoning Board of Appeals shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property.

4. The Zoning Board of Appeals shall approve, approve with conditions or disapprove such application. The decision of the Zoning Board of Appeals shall be accomplished within thirty (30) days from when all necessary information has been supplied by the applicant.

C. Standards:

1. Any owner of not less than five (5) contiguous acres of land located in a district permitted cluster of residential development may request in writing to the Code Enforcement Officer that the regulations of cluster residential development apply to his property.

2. Uses permitted shall be the uses permitted in the district in which the cluster residential development is located.

3. The regulations of the district in which the cluster residential development is located shall be observed and maintained with the following exceptions:

a. The minimum lot area as established in the district in which the cluster residential development is located may be reduced by twenty (20) percent;

b. The minimum lot width at the building line may be reduced by ten (10) percent; The minimum front yard may be reduced to not less than seventy- five (75) feet;

c. The minimum rear yard may be reduced by not more than five (5) feet wherever the lot abuts common open space and.

d. The maximum lot coverage shall be increased by no more than five

(%) percent of the resulting lot acreage.

e. The minimum side yard may be reduced by no more than three (3) feet per side.

f. All lots within the planned residential area shall face and be serviced by existing or new streets constructed within the planned residential site boundaries, but shall not face on collector type or arterial type streets.

g. Open space land shall be set aside for the common use and enjoyment of all residents in the cluster development. In general, the land set aside for permanent open-space shall be the area differential between the regulations and requirements of the district and the requested requirements. Access to the open-space lands must be convenient to all residents.

h. Applicable sections of the General Provisions and Supplemental Regulations of this Law shall be followed.

## **SECTION 602**

### **Gravel & Sand Operations**

Non mine or quarry operations are not authorized until a temporary Special Use Permit is received from the Zoning Board of Appeals. This Special Use Permit shall be renewed annually. The following regulations shall apply at a minimum:

A. No excavation; blasting or stockpiling of materials shall be located within three hundred (300) feet of any public road or other property line.

B. No power-activated sorting machinery or equipment shall be located within six hundred (600) feet of any public road or other property line and all such machinery shall be equipped with satisfactory dust elimination devices.

C. All excavation slopes shall be adequately fenced as determined by the Code Enforcement Officer. Dormant portions of excavated slopes meeting or exceeding 30% average slope abandoned for three months or more shall be stabilized at grades less than 30%.

D. All gravel and sand operations shall be restored to safe and aesthetically pleasing state meeting or exceeding permit standards within two (2) months after termination of the operation.

E. Operator shall submit to the Town a noise, water, and dust management plan including tolerable limits, control measures, and process to receive and communicate with the Town on complaints. Also the operator shall submit a operations safety plan, including on site operations safety, access security, road entry and exit impacts and others as deemed appropriate by the Town Board. Both plans are required prior to approval for a Special Use Permit.

F. Hours of operation (including trucking and loading) for Gravel and Sand Operations in the Town shall be 7am to 6pm eastern time on weekdays and 9am to 6pm on



weekends. No operations shall take place on observed Holidays.

**SECTION 603                      Oil and Gas Wells**

A. All oil or gas wells and gas and oil storage facilities which includes all oil and gas equipment such as above ground pipes, vent regulators, gauges, tanks, compressors and cogeneration equipment and shall be located in accordance with the following specifications:

Minimum Front Yard (Measured from right-of-way in feet)	100
Minimum Rear Yard (feet)	75
Minimum Side Yard (feet)	50

They shall not be located within one hundred (100) feet of any existing dwelling or structure which is used to store farm products or house livestock or poultry; nearer than one hundred fifty (150) feet from any public building or area which may be used as a place or resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic or occupancy by the public; nearer than one hundred seventy-five (175) feet to the traveled part of any state, county, township, or municipal road or any public street, road or highway; or nearer than one hundred fifty (150) feet from any public stream, river or other body of water.

B. In addition, all laws and regulations enforced by the Oil and Gas Division of the New York State Conservation Department shall apply.

C. All sites shall be restored to a safe and aesthetically pleasing state within twelve (12) month after completion of drilling.

D. A \$5,000.00 cash bond per well head may be required by the Town board if deemed necessary.

E. The movement of heavy vehicles used in drilling operations during periods when town roadways are subject to heaving and break-up shall be coordinated with the Town Highway Superintendent. Drilling companies shall be responsible for damage which occurs to roadways due to the movement of heavy vehicles used in drilling operations.

F. The location above ground pipes, regulators, gauges, tanks and other permanent equipment less one hundred (100) feet of property line shall be accomplished by Special Use Permit with the adjacent landowners being contacted.

**SECTION 604                      Private Swimming Pool which is an Accessory Use**

A private swimming pool installed or maintained as an accessory use in a residential district shall meet the following requirements:

A. Any such pool which is installed in or above ground shall have above ground

sides of at least four (4) feet in height or be completely enclosed by a security fence not less than four (4) feet in height, with all gates or doors opening through such enclosure equipped with self-closing and self-latching devices designed to keep and capable of keeping such gates or doors securely closed at all times when not in actual use or a type approved by the Code Enforcement Officer. In addition all pools shall have a working pool entry alarm.

B. Such pool shall be maintained in a manner sufficient to meet the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.

C. Such pool shall be equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed as not to interfere with the peace, comfort, and repose of the occupant of any adjoining property.

## **SECTION 605**                      **Off-street Parking**

A. Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open to serve adequately the uses on each lot within the district. Any application for a building permit for a new or enlarged building, structure, or change in use shall include with it a plot plan drawn to scale and fully dimensioned, showing any parking in compliance with the regulations of this Law.

B. A required off-street parking space shall be an area of not less than one hundred sixty-two (162) square feet not less than eight and one-half (8 ½) feet wide by nineteen (19) feet long, exclusive of access drives or aisles, ramps, columns, or office and work area, accessible from streets, or alleys from private driveways or storage or parking of passenger automobiles or commercial vehicles under one and one-half (1 ½) ton capacity. Aisles between vehicular parking spaces shall not be less than twelve (12) feet in width when serving automobiles parked at a forty-five (45) degree angle in one direction and not less than twenty (20) feet in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic.

C. Parking facilities shall be designed with appropriate means of vehicular access to a street or alley in such a manner as will least interfere with the movement of traffic. No driveway or curb cut in any district shall exceed twenty-five (25) feet in width.

D. No parking space nor portion thereof established on the same zoning lot with a building shall be located within a required front yard. No parking spaces nor portion thereof established on a lot without a building shall be located closer to any street line than the front yard setback requirements of this Law in the same manner as a building or structure. The aforementioned required setbacks shall not be applicable to the commercial districts.

E. All open off-street parking spaces, except those accessory to single-family dwellings, shall be improved with a compacted macadam base and surfaced with some all-weather dustless materials.

F. The following parking spaces shall be provided and satisfactorily maintained by the owner of the property, for each use which, after the date when this Law becomes effective, is erected, enlarged, or alter for use for any of the following reasons:

<u>Uses</u>	<u>Min. of 1 Space per:</u>
One-family residence & mobile home	Dwelling unit
Two-family residence	Dwelling unit
Multi-family residence	Dwelling unit
Church	5 fixed seats
Homes for Aged	3 residents
Elementary School	20 students
High School & College	12 Students
Library	100 sq. feet
Places of assembly, convention hall & dance hall	200 sq. feet.
Club, Lodge (without sleeping accommodations)	4 members
Places providing sleeping accommodations, hotels motels & tourist homes	sleeping unit
Mortuaries or Funeral Parlors	1/8 viewing room, plus 1 for every employee
Office, Banks	100 sq. ft. floor area
Food Market	200 sq. ft. floor area
Eating & Drinking Establishments	4 seats or 1 for each 200 sq. ft. whichever is more
Bowling Alley	½ alley
Other commercial	300 sq. ft. sales area
Industrial	Employer (max. work shift)
Other uses not listed above	500 sq. ft. floor area

**SECTION 606                      Loading & Unloading**

Off-street loading and/or unloading spaces for commercial vehicles while loading and/or unloading shall be provided on each lot where it is deemed that such facilities are necessary to serve the use of used on the lot. The number of loading and/or unloading spaces required for commercial and/or industrial vehicles while loading and/or unloading shall be in addition to the off-street parking requirements listed in Section 605. Each loading and/or unloading space shall be at least fourteen (14) feet wide, sixty (60) feet long and shall have at least a fifteen (15) foot vertical clearance; shall have a sixty foot maneuvering area; shall have an all-weather surface to provide safe and convenient access during all seasons; shall not be constructed between the street right-of-way line and the building setback line.

**SECTION 607                      Signs**

A. Temporary signs are allowed in all districts. Other signs are permitted only when necessary to use(s) permitted on premises in the district in which located. No sign in excess of 32 square feet of surface area can be installed without a special use

permit.

B. Wherever located and whatever their nature, signs shall conform to the following regulations:

1. Construction, Maintenance and Removal: Every permitted sign must be constructed of durable material and maintained in good condition and repair. Should the Town of Cherry Creek Code Enforcement Officer, determine, following an inspection of the sign, that the sign is unsafe or insecure, or has been constructed, erected or is being maintained in violation of the Town of Cherry Creek Zoning Law, then the Code Enforcement Officer shall serve the permittee or the landowner with a written notice specifying the violation and defects.

In the event the permittee or landowner fails to comply within thirty (30) days after receiving such notice, such sign may be removed or altered at the direction of the Code Enforcement Officer to comply with the provisions of the Town of Cherry Creek Zoning Law at the expense of the permittee or landowner.

2. Electric Bulbs: No electrical bulbs shall be exposed unless satisfactorily shielded from view by a globe or other visible barrier.

3. Ingress, Egress: No sign shall be erected or located as to prevent free ingress or egress from any window, door or fire escape.

4. Light, Air: No sign shall be placed in such a position that it will obscure light or air from a building.

5. Attachments: No signs shall be permitted which are pasted, stapled, or otherwise attached to public utility poles or trees within the street right-of-way.

6. Traffic: No sign shall be so erected or located that, by reason of its location, shape or color, or the color, shape or location of the lights used in conjunction therewith, such sign might interfere with traffic or be confused with or obstruct the view or effectiveness of any official traffic sign, traffic signal, or traffic marking.

7. Glare: Illuminating arrangements for signs shall be such that the light is concentrated upon such sign and that there shall be no glare cast upon the street, the sidewalk or adjacent property.

8. Flashing Sign: No sign shall be a flashing sign. Flashing signs shall be defined herein as meaning any sign that: flashes by giving off or reflecting light; or moves; or revolves in any way; or has flowing or moving lights or parts of the sign; or alternates in any way its color, shape or intensity of illumination.

9. Abutting Sign: No sign shall be placed to face on an abutting residential district except when authorized by a variance.

10. Contrary to Zoning: No signs shall be erected containing information on it which states or implies that a property may be used for any purpose not permitted under the provisions of this Zoning Law.

11. Cessation: If a use ceases for a period of six (6) calendar months, signs must be removed within thirty (30) calendar days of the cessation. Such signs may be removed by the municipality at the expense of the owner or lessee of the property on which said sign is located within thirty (30) calendar days after the issuance by the municipality of written notice of violation. Removal shall include all sign frames and supports

12. Within Roads: No sign shall extend within a street or road right-of-way.

13. Setbacks, Yards: In matters of setback and required yards and other such respects free-standing signs larger than eight (8) square feet shall be regarded as buildings within the meaning of this Law.

14. Height: The top of no sign shall be more than forty (40) feet in height measured from the surface of the earth.

15. Building Signs: Signs attached to a building or buildings shall not project more than eighteen (18) inches from the wall upon which they are attached. Signs must be attached to parapet walls or other wall surfaces made in part of the main structure. Signs erected on a separated superstructure attached to the roof of the building to any other part of the building above the roof line shall not be permitted. No sign shall project higher than four (4) feet above the parapet line or the roof line, whichever is higher.

C. The following regulations apply to specific kinds of signs:

1. Temporary Sign: No real estate sign shall exceed six (6) square feet in area, with no more than two (2) such signs permitted use. Other signs shall not exceed twelve (12) square feet in area, and such signs shall be removed immediately upon the completion of work and the site or building on which the sign was erected shall be restored to its original condition upon removal of such signs.

2. Instructional Sign: Instructional signs may be represented by free standing signs or building signs each of which shall not exceed four (4) square feet in area.

3. Identification and Business Signs: In business districts, identification and business signs for each commercial parcel shall be limited to a total area of one hundred (100) square feet in size. No individual sign shall be greater than sixty-four (64) square feet in size. In all other districts identification and business signs shall be limited to a total area of thirty (30) square feet in size. In the case of corner lots maximum sign areas may be doubled.

D. The following signs shall be exempted from these regulations: directional, street, traffic, public safety, information or public service signs such as those advertising

availability of rest rooms, telephone or similar public conveniences, and signs advertising meeting times and places or non-profit service or charitable clubs or organizations, may be erected or maintained provided that such signs do not advertise any commercial or industrial establishment, activity, or organization.

E. A permit from the Code Enforcement Officer shall be required before a sign other than a temporary sign may be created, altered, or enlarged. A permit may not be issued by the Code Enforcement Officer unless all sign regulations in this Law are met. All requests for erection, alteration, or enlargement of any sign must be accompanied by a plan drawn to scale showing exact size, shape, height, and dimensions of such sign and its proposed location or placement upon any structure or property.

#### F. Advertising Signs

1. Maximum number of display faces – An advertising sign structure may have a maximum number of two (2) display faces on each advertising sign structure where the display faces are situated back to back. No other orientation of display faces on an advertising sign structure are permitted.

2. Spacing and Setback – All advertising signs shall be separated by a minimum radius of seven hundred fifty (750) feet. All advertising signs shall be located at least forty (40) feet from the edge of the road right-of-way.

3. Maximum Number of Display Faces Permitted in the Overlay District – There will be a total of ten (10) display faces permitted within the aforescribed overlay district. This includes those advertising faces presently existing at the time of the enactment of this amendment to the Zoning Law.

4. Size – The maximum advertising sign shall be three hundred (300) square feet or surface area per side.

5. Non-conforming Advertising Signs – Any non-conforming advertising signs shall be allowed to continue in use in their present condition and size. Any non-conforming advertising sign which is removed from the position it occupied at the effective date of this amendment and not restored within thirty (30) days shall be presumed abandoned and discontinued and may not be restored or re-erected except as provided for in the Town of Cherry Creek Zoning Law. Nothing herein shall be deemed to prevent maintaining a non-conforming sign in good repair and safe condition.

6. Identifier – All advertising signs shall have a conspicuous and easily read identifier that provides the name of the current sign owner, address and telephone number.

7. Advertising Bench – A bench for public use which is painted or otherwise covered with advertisement, or to which any sign is attached.

a. Advertising Benches shall only be permitted in the Business

District (B-1) and on the premises of an ongoing business.

b. A maximum of two (2) advertising benches shall be permitted at each business location and said benches must be situated entirely within the premises of the business.

c. It is required that advertising benches be affixed to building where practicable. If that is not possible then near the building but attached to the ground.

## **SECTION 608**

### **Regulation of Junk Cars, Heavy Vehicles & Trash**

#### **A. Junk Automobiles:**

1. Definition – A motor vehicle (excluding farm vehicles) which is not in a condition for legal use on public highways or which is in the process of being dismantled, or unlicensed, or unregistered.

2. In all districts a maximum of one (1) junk automobile shall be allowed to be maintained outdoors.

3. Junk vehicles shall be stored out of sight of adjacent properties and roadways to the greatest degree possible.

4. Three (3) junk automobiles shall constitute a junk yard. Junk yards are permitted within the township when properly licensed and when operated and maintained in conformity with the rules and regulations of Vehicle Dismantling Junk Yards. Junk yards shall not be permitted areas described in sections 402, 403, 404, or 405

#### **B. Heavy Vehicles:**

1. Definitions – Heavy vehicles shall mean automobile wreckers, commercial trailers, semi-trailers, or any vehicle or truck with dual wheels (four wheels mounted on the rear axle of a non-recreational vehicle.)

2. The parking of heavy vehicles in all districts shall be permitted unless it can be shown that there will be a nuisance associated with the vehicle.

#### **C. Trash Storage in Yards:**

1. Trash is not permitted to be stored in yards at any time excepting a 100 sq ft roadside area for weekly trash pick up.

## **SECTION 609**

### **Service Stations**

A. No public garage or motor vehicle service station, or private garage for more than five (5) vehicles shall have a vehicular entrance closer than two hundred (200) feet to an

entrance to a church, school, theater, hospital, public park, playground, or fire station. Such measurement shall be taken as the shortest distances between such entrances across the street, and along the street frontage if both entrances are on the same side of the street or within the same square block.

B. All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed, as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer than fifty (50) feet to any side propertyline.

C. No inoperative motor vehicles shall be kept on the premises of motor vehicle service stations for longer than two (2) weeks.

D. All waste material, motors, and motor parts, will be stored within structure or enclosed with fencing so as not to be visible from off the property.

**SECTION 610**                      **Garage and Lawn Sales**

Private garage or lawn-type sales including flea markets shall be limited to three (3) weekends of three (3) days per year per property owner. More frequent private sales require a Special Use Permit.

Public or semi-public organizations are exempt from the requirements of this Section.

**SECTION 611**                      **Unsafe Buildings**

A. Unsafe Structures and Buildings – All buildings or structures which are structurally unsafe, unsanitary, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment are, for the purpose of this Section, unsafe buildings. All such unsafe buildings are hereby declared to be illegal and shall be abated by repair and rehabilitation or demolition in accordance with the procedure of this Section.

B. Examination of Unsafe Buildings – The Code Enforcement Officer shall examine, or cause to be examined, every building reported as unsafe or damaged, and shall make a written record of such examination. This record will be submitted to the Chautauqua County Health Department when it appears that State Health Laws may be in violation.

C. Notification of Owners – Whenever the Code Enforcement Officer shall find any building, or structure, or portion thereof, to be an unsafe building as defined in this Section he shall give to the owner, agent, or person in control of such building or structure written notice stating the defects thereof. This notice shall require the owner within the stated time, either to complete specified repairs or improvements, or to demolish and remove the building or structure, or portion thereof.

D. Prohibition of Occupancy – If the Code Enforcement Officer finds that there is



actual and immediate danger of failure or collapse so as to endanger life, such notice shall also require the building structure, or portion thereof, to be vacated forthwith and not reoccupied until the specified repairs and improvements are completed, inspected, and approved by the Code Enforcement Officer. The Code Enforcement Officer shall cause to be posted at each entrance to such building a notice "THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE ENFORCEMENT OFFICER." Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm, or corporation, or their agents, or other servants to remove such notice without written permission of the Code Enforcement Officer, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

E. Noncompliance – In case the owner, agents, or person in stated control cannot be found within the stated time limit, or if such owner, agent, or person in control shall fail, neglect or refuse to comply with notice to repair, rehabilitate, or demolition of that portion thereof, the Town Board shall be advised of all the facts in the case, and shall institute an appropriate action in the courts to compel compliance.

## **SECTION 612                                      Camper/Recreational Vehicles – Accessory Use**

A. Campers/Recreational Vehicles are regulated in accordance with Town Law 2 of 2022, Titled: "Camper / Recreational Vehicle Law of the Town of Cherry Creek", as approved by the Town Board on February 14, 2022. The content of Town Law 2 of 2022 is repeated here for reference.

B. The purpose of the law is to manage the ongoing issue of dilapidated campers/recreational vehicles placed within the Town.

C. Authority: This Local Law is enacted pursuant to the provisions of SS 103, Subdivision 1, of the New York General Municipal Law, as amended by Chapter 608 of the Laws of 2011, and Chapter 2 of the Laws of 2012 and the Municipal Home Rule Law of the State of New York.

D. Definitions: The Town Board of the Town of Cherry Creek, County of Chautauqua, State of New York, hereby defines Recreational Vehicles as follows:

A Camper or Recreational Vehicle is ready for highway use if it would pass a NYS vehicle safety inspection, on its own wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

A Recreational Vehicle is a vehicle originally designed for human habitation for recreational, camping, travel, emergency, or other occupancy that has its own mode of power or is mounted on or towed by another vehicle, including but not limited to campers, travel trailers, fifth-wheel trailers, folding camper trailers, truck campers and motor homes, but not Mobile Homes.

E. Restrictions: Campers and / or Recreational Vehicles placed on sites within the Town of Cherry Creek shall be either:

1. On ten (10) acres or more and not visible from any neighboring property or public way at any time during the year.
2. On site fewer than 180 consecutive days.
3. Fully licensed and ready for highway use.

F. Enforcement: The Local Law is to be enforced by the Code Enforcement Officer, who, when observing a violation of this Local Law, shall issue a Appearance ticket for such violation.

G. Penalties: Any violation of this Local Law shall be deemed an offense punishable by a fine as specified in Section 1202.

### **SECTION 613                      Mobile Home Parks**

Mobile home parks shall comply with the following standards:

1. Parks shall be limited to properties of at least twenty (20) acres and not more than four (4) mobile homes per acre net of roads and common areas.
2. Mobile homes shall be skirted with an attractive fire resistant material within thirty (30) days from the time of setup.
3. Streets shall be a minimum of sixteen (16) feet wide and shall be paved and contain no dead ends.
4. Off-street parking shall be provided with a minimum of four hundred (400) square feet for each mobile home.
5. Each mobile home shall be located on a lot or in a designated area of a property which is a minimum of six thousand (6,000) square feet and a minimum of fifty (50) feet in width.
6. Walkways from the street to door shall be provided in addition to a patio for each mobile home.
7. Sufficient auxiliary parking shall be provided for trucks, boats, travel trailers, etc.
8. Mobile homes shall be setback a minimum of ten (20) feet from any public road right of way.
9. Entrance and exist to the park shall be safely designed.
10. A twenty (30) foot buffer zone shall be established around the perimeter of the park.
11. Open recreation areas shall be set aside at central locations at a rate of four hundred (400) square feet per mobile home unit.

**SECTION 614**

**Travel Trailer Camps (Commercial Campgrounds)**

Travel trailer camps shall comply with the following standards:

1. All lots (pads) shall be a minimum of seventy-five (75) feet from any highway. In addition, other setback requirements specified in this Law shall apply.
2. Off-street parking, loading, and maneuvering space shall be provided.
3. Access to the park must be designed to assure safe and convenient movement of traffic into and out of the park with a minimum disruption of traffic on adjacent streets. This shall include a minimum clear view of one hundred fifty (150) feet while pulling out onto the adjacent street.
4. Minimum lot (pad) sizes shall be 30 x 60 feet.
5. Walkways shall be provided to service buildings.
6. Open recreation spaces shall be provided in convenient locations and the total area available shall equal the sum of the lots (pads) area.
7. The maximum length of occupancy per year shall be six (6) months. Trailers shall not be utilized as a permanent residence.
8. Accessory uses such as snack bars, recreation facilities, showers, Laundromats, etc., customarily associated with travel trailer parks shall be permitted. However, the land utilized in this manner should not account for more than 10% of the total area of the park and the services shall be directed towards the occupants of the park. Finally, no commercial character shall be visible from outside the park and such services shall only be allowed when the number of sites is sufficient to support these services.
9. Parks shall not be located so as to cause heavy traffic to be directed through residential areas not accustomed to heavy traffic.

**SECTION 615**

**Maintenance of Front Yards**

It shall be prohibited to collect, store, or in any way maintain in a front yard wastepaper, rags, scrap metal, machine, appliances, or items similar in nature to the above mentioned as determined by the Zoning Board of Appeals.

**SECTION 616**

**Private Camps**

Any area of land or water, including any building or group of buildings used for temporary or seasonal living, camping or recreation purposes with a staff of counselors, but excluding public owned areas or buildings used for such purposes.

Outdoor areas, including camping or picnic area and playground or sports areas shall be located at least one hundred twenty-five (125) feet from all property lines. The Zoning Board of Appeals may require suitable fencing and buffer zones for safety reasons or protection and landscaping to control the emission of noise and light beyond the boundaries of the campsite.

There shall be provided on the site one off-street parking space for each member of the camp staff and one space for every two campers. Parking area shall be at least fifty (50) feet from the street line and fifty (50) feet from side and rear lot lines, and shall be suitably screened and permanently improved.

Each structure in a camp which is intended for residence, cooking, or recreation purposes shall be equipped with toilets and wash basins which drain into approved septic systems in accordance with the rules and regulations promulgated by the Chautauqua County Health Department. There shall be at least one toilet and one wash basin for each ten (10) campers, with separate facilities for male and female.

No buildings or structures shall be located closer than two hundred (200) feet to any property line. Temporary structures may be permitted, but shall not cover more than five (5) percent of the site and shall not be more than one story in height.

Overnight accommodations for campers and staff members shall be limited to one bed for every 5,000 square feet of site area. Every building which is to be used for sleeping purposes shall have at least 100 square feet of floor space for each bed, including bedroom or dormitory, closets and bathrooms, but excluding all other space.

There shall be at least one acre of suitably improved playground or sports area for every 100 campers, or major portion thereof.

No more than 15 persons shall be permitted in any building not fireproof or semi-fireproof construction.

Permits shall be issued by the Zoning Board of Appeals for a period not to exceed one (1) year, and the Zoning Board of Appeals may require additional screening, landscaping, buffer zones, fencing, trees, plantings, shrubbery, drainage facilities, paving or sanitary facilities in accordance with and as provided for by the Zoning Board of Appeals.

#### **SECTION 617                      Trees Tops and Flooding**

Tree tops from logging or wood cutting operations are prohibited from being left in or over the stream bed of any stream.

#### **SECTION 618                      Vehicular Dismantling and Scrap Yards**

A. Introduction – Vehicular dismantling junk yards (hereinafter referred to as dismantling yards) have always provided a valuable and needed service by providing a depository for junk cars as well as serving to keep late model cars in parts. All such

scrap yards permitted are to maintain the public health, welfare, safety and prevent nuisances and maintain a clean and attractive neighborhood, while providing a service to the residents of Cherry Creek.

## B. Vehicular Dismantling and Scrap Yards (Commercial)

### 1. Definition

a. A Vehicular Dismantling Yard is "...any place of storage or deposit, whether in connection with another business or not, where three or more unregistered, old or secondhand vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some of all the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing the same or for any other purpose; such terms shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles." This excludes vehicles used in a normal farming operation.

b. Scrap Yards – A Scrap Yard is "...any place of storage or deposit of more than one hundred (100) square feet, of a commercial or private nature, where metal, glass, rags, paper, discarded materials or machinery are held, whether for the purpose of disposal, reclamation, recycling or resale of such, including establishments having facilities for processing iron, steel or nonferrous scrap for remelting purposes."

### 2. Junk Automobiles

a. Definition – A motor vehicle (excluding farm vehicles) which is not in a condition for legal use on public highways or which is unlicensed or unregistered, or is in the process of being dismantled.

## C. Licensing Requirements

1. This ordinance requires that (1) a license be obtained from the County and (2) a permit must be received from the local Zoning Board of Appeals.

2. The Zoning Board of Appeals, upon receipt of the necessary applications fees, will evaluate the proposed location of the dismantling or scrap yard and certify that it is not contrary to the requirements of the Zoning Law with respect to the location.

3. The Zoning Board of Appeals shall also take into consideration the location of the proposed dismantling or scrap yard in relation to churches, schools, hospitals, public buildings, places of public assembly, nursing homes, homes or institutions for the elderly or infirmed. It shall consider whether or not the proposed location can be reasonably protected from affecting the public health, welfare, safety or other cause. Aesthetic considerations must also be weighed.

4. The applicant shall comply with all other reasonable requests of the Zoning Board of Appeals.

5. The Zoning Board of Appeals shall hold a hearing on the application not less than three (3) nor more than six (6) weeks from the date of receipt of the application. Notice of the hearing shall be sent to the applicant and also published in the official newspaper not less than ten (10) days before the hearing.

6. At the time of the hearing, the Zoning Board of Appeals shall hear the applicant and all other persons wishing to be heard on the application. The Zoning Board of Appeals shall take into account the applicant's ability to comply with the zoning requirements and applicant's background as to any convictions for any type of larceny or receiving of stolen goods and to any other matters within the purpose of the Law.

7. Within two (2) weeks of the hearing, the Zoning Board of Appeals will make a finding as to whether or not the applicant shall be granted the license. If approved, the license fees must be paid, and the certificate of approved location shall be issued to remain in effect until April 1 of the following year. The Town Board will review compliances prior to approval of the renewal application. Approval is personal and may not be assigned to other persons without the approval of the Town Board.

#### D. Restrictions

The following restrictions shall be placed on the vehicular dismantling and scrap yards:

##### 1. Fences

a. Dismantling or scrap yards shall be completely surrounded with a fence for security purposes of at least eight (8) feet in height, aesthetically pleasing in appearance, and effectively screen the contents of the dismantling hard from public view.

b. There shall be located a gate in the fence which shall be kept locked at all times except when the dismantling or scrap yard is in operation.

c. The fence shall be located a minimum of fifty (50) feet from adjacent public highways and at least twenty-five (25) feet from all other property lines.

d. All vehicles, parts, scrap and work on such vehicles, parts and scrap shall take place within the fenced area.

e. Where topography, natural growth of timber or other considerations accomplished the purpose of fencing, the fencing requirements may be reduced by the governing body, provided that such natural barrier conforms with the purpose of fencing.

##### 2. Location Considerations

a. Dismantling and scrap yards shall be allowed where there will be a minimum negative effect of the character of existing neighborhoods.

b. No dismantling or scrap yards shall be permitted within five hundred (500) feet of a church, school, public building, place of public assembly, nursing home, homes or institutions for the elderly or infirmed.

c. Dismantling and scrap yards shall not be permitted to be located upon sloped areas where an eight (8) foot fence will not reasonably screen said vehicles and scrap.

3. Off-street parking shall be provided for customers.

4. Fire Safety

a. Inside, adjacent to and contiguous with the fence, a strip of land at least ten (10) feet wide shall be kept clear of all dry grass or other combustible material so as to provide a fire lane around the whole area.

b. There shall be maintained at least one (1) fire extinguisher of design and capacity, approved by the local fire chief, for each forty thousand (40,000) square feet of area. Each extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available. Each extinguisher shall be inspected and serviced in accordance with NFPA regulations.

c. The vehicles, parts and scrap shall be dismantled and/or disassembled by means other than burning (a cutting torch is permissible). They shall be arranged in neat rows so as to merit easy, clear passage through the area.

5. Visual Considerations

a. There shall be no stacking of vehicles or scrap above eight (8) feet in height from the ground.

b. Vehicles and scrap which have been crushed may be loaded onto the bed of a truck which shall be removed from the premises within a reasonable period of time.

6. Minimum Lot Size

a. No dismantling or scrap yard shall be allowed on a lot size less than five (5) acres.

b. Residence shall not be included to make up the minimum lot size.

7. Other considerations

a. Suitable sanitary facilities shall be provided in accordance with Chautauqua County Health Laws.

b. Inspection of vehicular dismantling and scrap yards by the Code Enforcement Officer and the local Fire Chief shall be allowed at any reasonable time to insure compliance with this and other laws.

c. The movement of disabled vehicles to and from the dismantling yard on town, county or state highways must comply with county and state motor vehicle regulations.

d. Other requirements deemed necessary.

e. Licensing Fee

1. Yearly fee of one hundred dollars (\$100) prorated from date of application to April 1 of the following year.

2. License fee to be paid at the time of the Town Board approval.

f. Enforcement and Penalties

For any and every violation of the provision of this ordinance, the owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and the lessee or tenant of any entire building or entire premises where such violation have been committed or shall exist, and the owner, general agent, contractor, lessee or tenant of any part of a building or premises in which part such violation has been committed or shall exist, and the general agent, architect, builder, contractor or any other person who knowingly commits, takes part or assists in any such violation or who maintains any building or premises in which such violation shall exist shall be guilty of a misdemeanor and liable on conviction thereof to a fine of not more than \$1,000.00 or imprisonment for not more than one (1) year, or both. Each week's continued violation shall constitute a separate and additional violation. Such fines shall be collected as like fine or penalties are by law collected.

## **SECTION 619**

### **Gas Compressors, Generators and Related Equipment**

A. Purpose - To promote the safety and general welfare of the public and to maintain the quality of neighborhoods by reducing continuous or frequent unreasonably loud noises associated with the operation of gas compressors, generators and equipment connected hereto. The conditions specified in this Section are to be enforced for all gas compressors, generators, and equipment connected thereto not already subject to New York State law and regulations.



## B. Administration

1. Permit Requirements – A Special Use Permit shall be required for the placement of a gas compressor, generator and all equipment connected thereto.

2. Preexisting gas equipment – All gas compressors, generators and equipment connected thereto in place or being placed on real property at the time of the enactment of this Section and for which a permit has not been issued by the Code Enforcement Officer of the Town of Cherry Creek shall be subject to the following specific conditions: C1, Location; C2, Noise levels; C3, Certification of noise levels; C4, Buffers; C5 Identification Signs; and D, Protective fencing. Notification to comply must be given within ten (10) days of enactment and compliance shall take place within sixty (60) days after notification. A longer compliance period may be granted by the Permitting Officer after appropriate public hearing if the cost of the alterations are significantly high.

## C. Conditions

All gas compressors, generators and equipment connected thereto shall be located and designed such that the noises associated with the use shall be mitigated to the standards set forth herein. It shall be unlawful for any person or firm owning or operating gas compressors, generators and related motorized equipment to make, continue or cause to be made or continued any noise in excess of the standards specified herein. The following specific conditions shall be met:

1. Location – The equipment and appropriate mechanical silencing apparatus shall be appropriately located with consideration given to predominant wind direction, topography, location of dwelling units and other relevant physical factors, including ambient noise levels and natural acoustical buffers. The equipment shall be located on land owned or leased by the operator of the equipment and placed no closer than five hundred (500) feet (as a safety factor only) from any dwelling unit which is present on the date the permit is granted and all proposed residential construction for which a zoning permit has been received and substantial work has been completed within one (1) year from the granting of the permit.

### 2. Noise Levels

a. Decibel Level (existing equipment) – The compressors, generators and equipment connected thereto shall be designed, operated and maintained by the owner or operator so that the sound level produced by the equipment does not exceed forty (40) decibels (A-weighted) (expressed as 40 dBA) sound level at the exterior of any presently existing residence and all proposed residential construction for which a zoning permit has been received and substantial work has been completed within one (1) year from the granting of the permit.

b. Decibel Level (proposed equipment) – The compressor, generator and equipment connected thereto shall be designed, operated and maintained with good

engineering practices and shall not emit noise at a level exceeding 40 dBA at the distance from the compressor predicted by the inverse square law and atmospheric attenuation at standard conditions to yield 40 dBA when the criteria  $((52 + 10 \log \text{HP}) \text{ dBA at } 50' \text{ on-axis to the heat-exchanger fans})$  is invoked.

c. The compressor, generator and equipment shall not be operated except for daytime testing until the owner or operator demonstrates that the compressor meets the performance standards expressed in paragraphs C(2)(a) and C(2)(b) above. It is the responsibility of the owner or operator of the equipment to satisfy these standards.

d. The same standards of performance described in paragraphs C(2)(a), C(2)(b), and C(2)(c) above shall be required for any continuously operating power source and meeting this requirement shall be the responsibility of the owner and/or operator of the source.

3. Certification of Noise Level – Prior to being granted a permit for the placement of equipment, the owner or operator of the equipment proposed to be placed shall be responsible for verifying that the equipment and quieting devices (silencer, low speed fan, building, buffers, etc.) as proposed will meet the specified db level requirements. An ambient noise study conducted by a qualified expert in acoustical engineering must be submitted in writing with the permit application for the ambient noise level of the location and at occupied dwelling units located in proximity thereto. Additionally, after placement of the equipment is completed along with the specified quieting devices, the same noise consultant must verify that the decibel requirements are complied with.

4. Buffers – where it is deemed necessary, either a natural or man-made acoustical buffer may be required for the purpose of minimizing the nuisances associated with the equipment. In extreme cases, where no alternative is available, a fully enclosed and muffled structure may be required.

5. Identification Sign – Each piece of equipment shall be identified with a sign conspicuously placed at the intersection of the access road and the public highway, identifying the equipment, its location, and the name of the person/company responsible for the unit, and a twenty-four (24) hour emergency telephone number.

#### D. Protective Fencing

All compressors, generators and related equipment not surrounded by a building constructed to bring the equipment in compliance with the decibel levels herein specified shall be surrounded by a protective fence of suitable construction as a safety factor.

**SECTION 620**

**Sludge & Sewage Operations**

A. Purpose to promote the safety and general welfare of the public by:

1. Preventing the contamination of surface water and ground water used for residential, commercial and industrial purposes.
2. Preventing the contamination of pastures and croplands.
3. Preventing the contamination of grazing animals.

B. Administration – A Special Use Permit shall be required before any sludge operation may commence. A fee for this Special Use permit is established at \$250.00.

C. Conditions:

1. The landowner upon whose land the sludge operation is to be carried out must comply with Federal, State and Local laws, rules, regulations and permits governing the application of sludge to land and/or other operations involving sludge.
2. Sludge operations may not occur within five hundred (500) yards of existing water well, springs or stream channels.
3. Sludge operations may not occur within five hundred (500) yards of an existing residence or outbuilding used to housed animals.
4. Sludge operations may not occur within five hundred (500) yards of the boundary of a pasture or cropland upon which animals have been grazed or crops have been grown within one (1) year of the filing of an application for a Special Use Permit to allow a sludge operation.
5. A permanent fence must completely enclosed the area wherein the sludge operations is to occur. The fence must be chain link in construction and six (6) feet in height at all points. The fence must also be equipped with locking gate.
6. A sludge operation may only occur in an AR1 district.
7. All sludge operations must be carried out in strict conformity with the conditions set forth in the permits issued by the State of New York and its agencies as well as those permits issued by the Town of Cherry Creek.
8. The generator of sludge or sewage sludge (other than the Town itself) must provide a "Performance Security Bond" to the Town of Cherry Creek in the amount of \$1,000,000.00 to insure compliance with all aspects of New York State and Local laws, rules, regulations and permits.

9. A negative buffer zone, with a minimum width of one hundred (100) feet separating the application site and any surface water stream channel (intermittent or perennial).

10. The generator of sludge or sewage sludge must, prior to the application for the Special Use Permit, establish and submit with the permit, base line data of parameters for the heavy metal cadmium, nickel, copper, chromium, lead and zinc also testing for all known toxic chemicals. Testing is to be conducted on all water wells or water sources that are located down slope of the application site. Water testing is to be conducted on an annual basis with a copy of all test results being submitted to the Town Clerk of the Town of Cherry Creek within ten (10) working days of sampling.

#### D. Definitions

1. Sludge – Means any solid, semisolid or liquid waste generated from a wastewater treatment plant, water supply treatment plan, or air pollution control facility but does not include the treated effluent from a wastewater treatment plant.

2. Sewage Sludge – Means the accumulated semisolids or solids resulting from treatment of wastewaters from publicly or privately owned or operated sewage treatment plants.

3. Sludge Operations – The storage and/or application of sludge or sewage sludge.

4. Water Wells and Water Sources – Potable water for human and animal consumption.

5. Grazing Animals – Those domestic animals that use the method of grazing ground cover to maintain body, strength, vital organs and produce animal products such as milk or meat.

6. Contamination – Anything that prohibits safe water and/or ground usage.

7. Generator – The treatment plant whether private or public owned.

8. Negative Buffer Zone – A strip of land bordering a stream channel that is inhabited by a variety of plant life, trees, shrubs, grasses, etc. for the purpose of restricting surface water runoff and providing nutrient uptake.

#### **SECTION 621**

#### **Communication Towers**

A. Purpose – The purpose of this Section is to promote the health, safety and general welfare of the residents of the Town of Cherry Creek; to provide standard for the safe provision of communications consistent with applicable Federal and State regulations; to minimize the total number of communication towers in the community by encouraging

shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from communication towers by requiring careful siting, visual impact assessment, and appropriate landscaping thereby protecting the natural features and aesthetic character of the Town of Cherry Creek.

#### B. Application of Special Use Regulation

1. No communication tower, except those approved prior to the effective date of this Section, shall be used unless in conformity with these regulations. No communication tower shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a communication tower unless in conformity with these regulations.

2. Applications proposing to co-locate on a previously approved communication tower do not require a Special Use Permit. They are, however, subject to Site Plan Review in accordance with Subsection J. The Zoning Board of Appeals may require the applicant to submit any of the items under Subsection C(1) below as part of the Site Plan Review process.

#### C. Shared Use of Existing Tall Structures

At all times, the shared use of existing tall structures (for example: municipal water towers, multi-story buildings, farm silos, etc.) and existing or approved towers shall be preferred to the construction of any new towers.

1. An applicant proposing to share use of an existing tall structure shall be required to submit:

- a. A completed application for Special Use Permit.
- b. Documentation of intent from the owner of the existing facility to allow shared use.
- c. Site Plan. The site plan shall show all existing and proposed structures and improvements, including antennae, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for the new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
- d. An engineer's report certifying that the proposed shared use will not diminish the structure, and explaining what modifications, if any, will be required in order to certify the above.
- e. A completed Environmental Assessment Form.
- f. A copy of its Federal Communications Commission (FCC) license.

2. If any applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with Subsection C(1) above, and if modifications indicated according to Subsection (1) are deemed insignificant by the Zoning Board of Appeals, after the Zoning Board of Appeals conducts a hearing and complies with all SEQRA provisions, the Zoning Board of Appeals shall grant a Special Permit without further review under this Section. If the Zoning Board of Appeals determines that any modifications indicated according to Subsection C(1) are significant, it may require further review according to Subsections H through P below.

#### D. New Communication Tower

The Zoning Board of Appeals may consider a new communication tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report with an inventory of all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Zoning Board of Appeals in consultation with the applicant. The report shall outline opportunities for shared use of these facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

#### E. Shared Usage of an Existing Tower Site for Placement of New Tower

Where shared use of existing tall structures and existing or approved towers is found impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection D above. Any proposal for a new communication tower on an existing tower site shall be subject to the requirements of Subsections G through O below.

#### F. No Tower at New Location

The Zoning Board of Appeals may consider a new communications tower on a site not previously developed with an existing tower when the application demonstrates that shared use of existing tall structures, and existing or approved towers is impractical and submits a report as described in Subsection D above; and when the Zoning Board of Appeals determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with Subsection E. Any proposal for a new communication tower shall also be subject to the requirements of Subsection G through P below.

#### G. New Towers

Future Shared Use.

The applicant shall design a proposed new communications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Zoning Board of Appeals a letter of intent committing the owner of the proposed new tower and his/her successors in interests to negotiate in good faith for shared use of the proposed tower by other communications providers in the future. This letter shall be filed with the Zoning Officer prior to the issuance of a building permit. The letter shall commit the new tower owner and his/her successor interest to:

1. Respond within ninety (90) days to a request for information from a potential shared-use applicant.
2. Negotiate in good faith concerning future requests for shared use of the new tower by other communications providers.
3. Allow shared use of the new tower if another communications provider agrees in writing to pay reasonable charges. The charge may include, but not limited to, a pro-rata share of the cost of the site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all the costs of adapting the tower or equipment to accommodate shared use without cause electromagnetic interference.

#### H. Site Plan Review

The applicant shall submit the following:

1. An applicant shall be required to submit a site plan which shall show all existing and proposed structures including lighting and improvements including roads, buildings, towers, guy wires and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
2. Supporting Documentation – The applicant shall submit a complete short Environmental Assessment Form, a complete Visual Assessment Form (visual EAF Addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification of any clearing required. The applicant shall also submit a copy of its FCC license.

#### I. Lot Size and Setbacks

All proposed communication tower accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

1. Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire area required shall be leased from a single parcel unless the Zoning Board of Appeals determines that this provision may be waived.

2. Communications towers shall comply with all existing setback requirements of the underlying zoning district, or shall be located with a minimum setback from any property line equal to at least five hundred (500) feet or thirty percent (30%) of the height of the tower, whichever is greater. Accessory buildings shall comply with minimum setback requirements in the underlying zoning district.

#### J. Visual Impact Assessment

The Zoning Board of Appeals may require the applicant to undertake a visual impact assessment which may include:

1. A Zone of Visibility Map shall be provided in order to determine the locations where the tower may be seen.

2. Pictorial representations of before and after view from any key view points both inside and outside of the Town, including, but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Zoning Board of Appeals shall determine the key sites at a pre-submission conference with the applicant.

3. Assessment of the alternative tower designs and color schemes, as described in Section K below.

#### K. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new tower shall comply with the following:

1. Any new tower shall be designed to accommodate future shared use by other communications providers.

2. Unless specifically required by other regulations, a tower shall have a finish that minimize its degree of visual impact.

3. The maximum height of any new tower shall not exceed that which shall permit operation with only that artificial lighting prescribed by State and/or Federal law and/or regulations. The Zoning Board of Appeals at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation.

4. No lighting shall be permitted unless required by the Federal Aviation Administration. If the tower lighting is necessary, the applicant shall fully disclose to the Zoning Board of Appeals all lighting options. Only the minimal amount of tower lighting



necessary to meet State and/or Federal laws and/or regulations shall be authorized. Light pollution or light spillover to the nearby and distant properties shall be minimized to the greatest degree possible by use of shielding. The Zoning Board of Appeals upon review approve only the lighting scheme that it determines to be least obtrusive to the affected properties.

5. The Zoning Board of Appeals may request a review of the application by a qualified engineer in order to evaluate the need for and the design of any new tower.

6. Accessory buildings will be non-habitable structures used in conjunction with a communications tower and located on the same lot as the tower. Said buildings shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.

7. A sign shall be conspicuously placed near the base of a tower and it shall generally state that danger exists and no access permitted. No portion of any tower or accessory building shall be used for a sign other than as stated or for any other advertising purpose, including but not limited to: company name, phone numbers, banners and streamers.

#### L. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter (measured at height four (4) feet off the ground) shall take place prior to the approval of a Special Permit.

#### M. Screening

Deciduous or evergreen tree planting may be required to screen portions of the tower and accessory buildings from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

#### N. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private shall be made. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

#### O. Parking

Parking shall be provided to assure adequate emergency and service access. The Zoning Board of Appeals shall determine the number of required spaces based upon a recommendation from the applicant. Two (2) parking spaces shall be located in any required yard.

#### P. Fencing

The tower and any accessory building shall be adequately enclosed by a fence, design of which shall be approved by the Zoning Board of Appeals. This requirement may be waived by the Zoning Board of Appeals if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

#### Q. Inspections and Removal

Periodic inspections of all towers shall be required every five (5) years. Inspections shall be conducted by a licensed engineer. Based on the results of an inspection, repair or removal of any tower may be required. Tower owners shall remove all towers and accessory buildings that are unused for a twelve (12) month period. Tower owners shall immediately notify the Code Enforcement Officer of such nonuse. Removal shall be within six (6) months of written notification to the Town or written ninety (90) days notification from the Town. Owners may request a Special Use Permit hearing to request an extension of time for removal for just cause. Failure to notify and/or remove an unused tower in accordance with these regulations shall be a violation.

#### R. Exemptions

1. Communication Towers may be repaired and maintained without restrictions.
2. Antennas used solely for residential household television and radio reception or transmission which do not exceed twenty-five (25) feet in height measured from ground level adjacent to the house.
3. Satellite antennas measuring six (6) feet or less in diameter.

### **SECTION 622**

#### **Adult Entertainment Facilities**

##### A. Definitions

1. Adult Book/Video/Media Store: An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.
2. Adult Entertainment Facilities: Means and refers to "adult new-racks", "adult book stores", adult motion picture theaters, and "exotic cabarets".
3. Adult Motion Picture/Video Theater: An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.

4. Adult News Rack: Any machine or device, whether coin operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" defined herein.

5. Exotic Cabaret: A night club, bar or restaurant or similar commercial establishment which regularly features a) persons who appear nude or semi-nude; or b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas".

6. Specified Sexual Activities: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

7. Specified Anatomical Areas: a) less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the areola; b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

#### B. Location

The following provisions shall apply to the location of the adult entertainment facilities: a) adult entertainment facilities shall be permitted only in B-1 Business - Light Industrial Districts, as established under Article III of the Zoning Law of the Town of Cherry Creek, upon approval of a Special Use Permit; b) no adult entertainment facilities shall be permitted within five hundred (500) feet of any lot with a residential use; c) no adult entertainment facilities shall be permitted within one thousand (1,000) feet of any:

1. school;
2. religious institution; or
3. public park or public recreation facility

#### C. Additional Sign Requirements

The following provision shall apply to signs erected or maintained in connection with adult entertainment facilities: a) no off-site signs shall be permitted.

#### D. Public Display of Certain Matter Prohibited

Materials offered for same from "adult news-racks" shall not be displayed or exhibited in any manner which exposes to the public view any picture of illustration depicting any "specified sexual activity" or any "specified anatomical area". Material

offered for sale or viewing at any adult entertainment facility shall not be displayed or exhibited in any manner which exposes any depiction of "specified sexual activity" or any "specified anatomical areas" to the view or persons outside the building or off the premises on which such store or theater or use is located.

#### E. Restrictions Cumulative in Nature

The restrictions set forth in this Law are in addition to any applicable provisions of the Zoning Law of the Town of Cherry Creek. In the event of any conflict between any such provisions, the more restrictive provision shall be applied.

#### F. Penalties

Any violation of any provision of this Law by any person, corporation or entity shall be punishable by a fine of not less than \$350.00, or imprisonment. Each week's continued violation shall constitute a separate additional violation. The Town may also, in addition to the above penalties, seek any and all other remedies, such as set forth in Section 7-714 of the Town Law of the State of New York, and/or any other legal remedies, as it deems necessary and appropriate.

### **SECTION 623**

#### **Manufactured Home Conditions**

A. Conditions – Prior to the granting of a permit for the placement of a manufactured home on a private lot, it shall be proven that all regulations (except floor area requirements) required of a single-family structures shall be complied with, in addition to the following:

1. Adequate parking is available.
2. The minimum value of a manufactured home allowed to be placed on a lot after enactment date of this Law shall be twenty-five thousand dollars (\$25,000 USD) as evidenced by a signed report from a credentialed independent appraiser.
3. All manufactured homes, new and used, shall comply with all HUD construction and safety requirements, prior to be placed on a lot.
4. The space where the manufactured home must be a minimum of 50 feet wide and 6,000 sq ft in size.
5. All manufactured homes must recognize specified residential set backs and or a minimum of 30 foot set back from property lines, whichever is greater.
6. Any other reasonable conditions as deemed necessary by the permitting board shall be complied with. Installation of all manufactured homes must be in compliance with HUD Regulations and Standards.

B. Replacement of Manufactured Homes – Where a pre-existing manufactured home is to be replaced with another manufactured home or any other dwelling unit, a permit shall be required.

C. A manufactured home may only be used as a dwelling unit.

## **SECTION 624**

### **Wind Energy Conversion Systems**

#### **I. WIND ENERGY FACILITIES**

II. Regulatory References: Wind Energy Facilities are regulated in accordance with Town Law 1 of 2017 Titled: “Amendment to Local Law Governing Wind Energy facilities in the Town of Cherry Creek”, as approved by the Town Board on August 14 of 2017. The content of Town Law 1 of 2017 and NYS Law may overlap the Zoning requirements as detailed below. In the event there is duplicity the more stringent of the requirements shall apply.

A. Definitions – As used in Section 624 the following terms shall have the meanings indicated:

1. Agricultural or Farm Operations – means the land and on-farm buildings, equipment, manure procession and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock product as a commercial enterprise, including a commercial house boarding operation, as defined in New York State Agriculture and Markets Law §301 and “timber processing” as defined in subdivision fourteen of New York State Agriculture and Markets Law §301. Such farm operations may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

2. EAF – Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

3. Primary Structure – A structure that one or more persons occupies for personal or business reasons. Primary structures include residences and commercial buildings.

4. SEQRA – The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

5. Sound Pressure Level – Means the level which is equaled or exceeded a stated percentage of time. An L<sub>10</sub> – 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for six (6) minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

6. Small Wind Energy Conversions System (“Small WECS”) – A wind energy conversions system consisting of a wind turbine, a tower, and associated control or conversion electronics, which as a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

7. Site – The parcel(s) of land where the Wind Energy Facility is to be placed. The site could be publicly or privately owned by an individual or group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one (1) for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said facility or a setback agreement and received the required variance shall not be considered off-site.

8. Total Height – The height of the tower and the further vertical extension of the WECS.

9. Wind Energy Conversion System (“WECS”) – A machine that converts the kinetic energy in the wind into usable form (commonly known as a “wind turbine” or “windmill”).

10. Wind Energy Facility – Any Wind Energy Conversion System, including Small Wind Energy Conversion Systems, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.

11. Wind Measurement Tower – A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

12. Wind Overlay District – A district which encompasses part or parts of one or more underlying districts and that establishes requirements for Wind Energy Facilities.

#### B. Permits and Re-zoning Required

1. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Cherry Creek except in compliance with the Article and shall require a building permit application.

2. No WECS including Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Cherry Creek except in a Wind Overlay District, pursuant to an application for rezoning and for Special Use Permit approved pursuant to this Article.

3. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Cherry Creek except pursuant to a Special Use Permit issued pursuant to this Article, except for subdivision 8 of this Section.

4. Notwithstanding any other provision of this Zoning Local Law, Special Use Permits for Wind Energy Facilities shall be issued by the Zoning Board of Appeals.

5. Exemptions – A WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is setback at least one and a half times its total height from a property line, and does not exceed one hundred twenty (120) feet in height. Towers over one hundred twenty (120) feet in total height utilized solely for agricultural operations in a state or county agricultural district shall apply for a Special Use Permit in accordance with this Local Law, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a building permit application and comply with Site Plan Review.

6. This Article shall apply to all areas of the Town of Cherry Creek.

7. Transfer – No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange), will occur without the prior approval of the Town, which approval shall be granted upon written acceptance of

the transferee of the obligations of the transferor under this Article, and that the transferee's demonstration, in the sole discretion of the Zoning Board of Appeals, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor any other party under this Article unless the entire interest of the transferor in all facilities in the Town is transferred and there are not outstanding obligations or violations.

8. Notwithstanding the requirements of this Article, replacement in kind or modification of an existing Wind Energy Facility may occur without Zoning Board of Appeals approval when 1) there will be no increase in total height; 2) no change in the location of the WECS; 3) no additional lighting or change in facility color; and 4) no increase in noise produced by the WECS.

### C. Applicability

1. The requirements of this Article shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Article.

2. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Article, shall not be required to meet the requirements of this Article; provided, however, that

a. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Article prior to recommencing production of energy.

b. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Article.

c. Any Wind Measurement Tower existing on the effective date of this Article shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.

3. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same site shall not preclude the installation of a Wind Energy Facility or part of such facility on such site. Wind Energy Facilities constructed and installed in accordance with this Article shall not be deemed expansions of a nonconforming use or structure.

### D. Wind Overlay District Rules

1. Wind Overlay District may be created in the Agricultural-Residential (AR1) District.

2. Initial requests for Wind Overlay Districts shall be submitted with applications for WECS Special Use Permits. No Wind Overlay District may be initially created without specific requests for WECS.

3. Once a Wind Overlay District has been created, new WECSs or accessory structures or facilities may be added in that District by grant of a Special Use Permit pursuant to the requirements of this Article.

### E. Applications for Wind Energy Conversion Systems and Wind Overlay District

1. A joint application for creation of a Wind Overlay District and Special Use Permit for individual WECS shall include the following:

a. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the application authorizing the representation.

b. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

c. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

d. A description of the project, including the number and maximum rated capacity of each WECS.

e. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:

1. Property lines and physical dimensions of the site.  
2. Location, approximate dimensions, and types of major existing structures, including all residences, and uses on site, public records, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Overlay District.

3. Location and elevation of each proposed WECS.

4. Location of all above ground utility lines on the site or within a radius equal to the total height of the WECS, transformers and power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

5. Location and size of structures above thirty-five (35) feet within a five hundred (500) foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open lattice towers are not considered structures.

6. The zoning designation of the subject and adjacent properties as set forth on the official Town Zoning Map.

7. Proposed boundaries of the Wind Overlay District.

8. To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:

(i) One and a half times the tower height radius.

(ii) Five-hundred (500) foot radius.

(iii) One thousand (1,000) foot radius.

9. Location of primary structures within one thousand two hundred (1,200) feet of each proposed tower. The distance from the center of the tower to any primary structure within one thousand (1,000) feet shall be noted.

10. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.

f. Vertical drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point



of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.

g. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determinations is submitted.

h. List of property owners, with their mailing addresses, within five hundred (500) feet of the boundaries of the proposed Wind Overlay District. The applicant may delay submitting this list until the Zoning Board of Appeals calls for a public hearing on the application.

i. Decommissioning Plan – The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) the method, through re-estimated every five (5) years by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of four (4) feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The plan shall include the Decommissioning Bond required by this Article.

j. Complaint Resolution – The application will include a complaint resolution process to address complaints from nearby residents. The process will utilize non-binding arbitration and include a time limit for acting on a complaint.

k. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

1. A construction schedule describing commencement and completion dates; and
2. A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

l. Completed Part 1 of the Full EAF.

m. Applications for Special Use Permits for Wind Measurement Towers subject to this Article may be jointly submitted with the WECS.

n. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants, and coolants.

o. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board of the Town of Cherry Creek shall issue a positive declaration of environmental significance.

p. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement ("DEIS") prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with application:

1. Shadow Flicker – The application shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with primary structures and describe measures that shall be taken to eliminate or mitigate the problems.

2. Visual Impact – Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two (2) locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into project and that is intended to lessen the system's visual prominence.

3. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Wind Overlay District.

4. Noise Analysis – A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the site (if access to the nearest residence is not available, the Zoning Board of Appeals may modify this requirement). The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.

5. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties adjoining WECS sites, including properties across public roads from the site.

6. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.

q. Written certification by a licensed professional engineer that the foundation and WECS design are within accepted professional standards, given all local conditions.

r. Tower design information sufficient to demonstrate compliance with wind-loading requirements.

s. Analysis of potential ice throwing and damage from blade throw impacts.

t. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

#### F. Application Review Process

1. Applicants may request a pre-application meeting with the Zoning Board of Appeals, or with any consultants retained by the Zoning Board of Appeals for application review.

2. Six (6) copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.

3. The Town or Town-designated consultants shall, within thirty (30) days of

receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application.

4. If the application is deemed incomplete, the Zoning Board of Appeals or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.

5. The applicant shall post the completed application and any accepted environmental impact statements on the internet and continue the posting until such time as the Wind Overlay District is approved or disapproved. The application shall be referred to the Zoning Board of Appeals in accordance with this Local Law.

6. The Zoning Board of Appeals shall hold at least one (1) public hearing on the application. Notice shall be given by first class mail to property owners within five hundred (500) feet of the boundaries of the proposed Wind Overlay District, and published in the Town's official newspaper, no less than ten (10) nor more than twenty (20) days before any hearing, but, where any hearing is adjourned by the Zoning Board of Appeals to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an Affidavit of Service. The assessment roll of the Town shall be used to determine mailing addresses.

7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.

8. Notice of the project shall also be given, when applicable, to 1) the Chautauqua County Planning Board, if required by General Municipal Law §§239-1 and 239-m, and 2) to adjoining towns under Town Law §264.

9. SEQRA Review – Applications for WECS are deemed Type I projects under SEQRA. The Town Board of the Town of Cherry Creek shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town Board of the Town of Cherry Creek may require an escrow agreement for the engineering and legal review of applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town Board of the Town of Cherry Creek shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

10. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), and the report of recommendation of the Zoning Board of Appeals (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Zoning Board of Appeals may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

#### G. Standards for WECS

1. The following standards shall apply to all WECS and related infrastructure, unless specifically waived by the Zoning Board of Appeals as part of a permit:

a. All power transmission lines from the tower to any building or

other structure shall be located underground to the maximum extent practicable.

b. No television, radio, or other telecommunication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town Zoning Code. Applications may be jointly submitted for WECS and telecommunications facilities.

c. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

d. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.

e. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay District shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the District, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No letter, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

f. The use of guy wire is prohibited.

g. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.

h. All solid waste and hazardous waste and construct debris shall be removed from the site and managed in a manner consistent with all appropriate rules and regulations.

i. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

j. WECSs shall be located in a manner that minimizes significant negative impacts or rare animal species in the vicinity, particularly bird and bat species.

k. WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

l. Storm-water run-off and erosion control shall be managed in a manner consistent with applicable state and Federal laws and regulations.

m. The maximum total height of any WECS shall be 500 feet.

n. Construction of the WECS shall be limited to the hours of 7 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Zoning Board of Appeals.

o. Substations required to serve WECS are an Essential Public Service

under this Zoning Code. Substations shall be screened from public view to the extent possible.

p. The Town of Cherry Creek shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be not less than an amount to be determined by the Zoning Board of Appeals given the nature and scope of the project proposed by the applicant.

q. Any construction or ground disturbance involving agricultural land shall be done in accordance to New York State Department of Agriculture and Markets' publication titled Guideline for Agricultural Mitigation for Wind Power Projects.

#### H. Required Safety Measures

1. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

2. If the property owner submits a written request that fencing be required, a six-foot-high (6') fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.

3. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hours, 7 day a week coverage. The Zoning Board of Appeals may require additional signs based on safety needs.

4. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole.

5. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.

6. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

7. Accurate maps of the underground facilities shall be filed with the Town Clerk and with "Dig Safely New York (1-800-962-7962)" or its successor.

#### I. Traffic Routes

1. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include a) minimizing traffic impacts from construction and delivery vehicles; b) minimizing WECS related traffic during time of school bus activity; c) minimizing wear and tear on local roads; d) minimizing impacts on local business operations. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway

authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the date and time periods of expected use of designated traffic routes.

2. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Zoning Board of Appeals, sufficient to compensate the Town for any damage to local roads.

3. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

#### J. Setbacks for Wind Energy Conversions Systems

1. The statistical sound pressure level generated by a WECS shall not exceed L<sub>10</sub>-50 dBA measured at the closest exterior wall of any primary structure existing at the time of completing the SEQRA review of the application. If the ambient sound pressure exceeds 50 dBA, the standard shall be ambient dBA plus five (5) dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement. The sound pressure level measurement period shall be seven (7) days for a total continuous time period of one hundred sixty-eight (168) hours.

2. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1 of this section shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) Hz.

3. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to all Wind Turbine operation, provide that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

4. Any noise level falling between two (2) whole decibels shall be the lower of the two (2).

5. Each WECS shall be setback for site boundaries, measured from the center of the WECS, a minimum distance of:

a. Five hundred (500) feet from the nearest site boundary property line, except the setback shall be five hundred (500) feet where the boundary is within state, county, town or village-owned property.

b. Five hundred (500) feet from the nearest public road.

c. One thousand (1,000) feet from the nearest primary structure existing at the time of application, measured from the foundation of primary structure.

d. One hundred (100) feet from the edge of state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.

e. Five hundred (500) feet from gas wells, unless waived in writing by the property owner.

f. One thousand (1,000) feet from any other WECS.

6. Other Wind Energy Facility structures and improvements shall comply with underlying zoning district regulations.

#### K. Noise, Height and Setback Easements; Variances

1. In the event the noise levels resulting from a WECS exceed the criteria established in this Article, or a setback requirement is not met, a waiver may be granted from such requirement by the Zoning Board of Appeals in the following circumstances:

a. Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this Article, and that they wish to be part of the site as defined herein, and that consent is granted to 1) allow noise levels to exceed the maximum limits otherwise allowed or 2) allow setbacks less than required; and

b. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Zoning Board of Appeals, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel of the WECS.

c. In any case where written consent is not obtained, a variance from the Zoning Board of Appeals shall be required.

#### L. Creation of Wind Overlay Districts and Issuance of Special Use Permits

1. Upon completion of the review process, the Zoning Board of Appeals shall, upon consideration of the standards in this Article and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.

2. If approved, the Zoning Board of Appeals will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Districts, and authorize Town staff to issue a Special Use Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the Code Enforcement Officer to issue a building permit upon

compliance with the Uniform Fire Prevention and Building Code and other conditions of this Article.

3. The decision of the Zoning Board of Appeals shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

4. If approved WECS is not substantially commenced within two (2) years of issuance of the permit, the Special Use Permit shall expire.

#### M. Abatement

1. If any WECS remains non-functional or inoperative for a continuous period of one (1) year the applicant agrees that, without any further action by the Zoning Board of Appeals, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Zoning Board of Appeals all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

3. Decommissioning Bond or Fund – The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional tower and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York – licensed financial institution. All costs of the financial security shall be borne by the applicant.

#### N. Limitations on Approvals; Easements on Town Property

1. Nothing in this Article shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Article shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Zoning Board of Appeals deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Article.

#### O. Permit Revocation

1. Testing fund – A Special Use Permit shall contain a requirement that the



applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two (2) years, or more frequently upon the request of the Zoning Board of Appeals in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Article and shall also include an evaluation of any complaints received by the Town. The applicant shall have ninety (90) days after written notice from the Zoning Board of Appeals, to cure any deficiency. An extension of the ninety (90) day period may be considered by the Zoning Board of Appeals, but the total period may not exceed one hundred eighty (180) days.

2. Operation – A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within ninety (90) days after written notice from the Zoning Board of Appeals. The applicant shall have ninety (90) days after written notice from the Zoning Board of Appeals, to cure any deficiency. An extension of the ninety (90) day period may be considered by the Zoning Board of Appeals, but the total period may not exceed one hundred eighty (180) days.

3. Notwithstanding any other abatement provision under this Article, and consistent with Sections M(1) and O(2), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, 1) order either remedial action within a particular timeframe, or 2) order revocation of the Special Use Permit for the WECS and require removal of the WECS within ninety (90) days. If the WECS is not removed, the Zoning Board of Appeals shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

### III. WIND MEASUREMENT TOWERS

A. Wind Site Assessment – The Zoning Board of Appeals acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted as Special Use in the Agricultural-Residential (AR1) Use District.

#### B. Applications for Wind Measurement Towers

1. An application for a Wind Measurement Tower shall include:
  - a. Name, address, and telephone number of the property owner. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

b. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

c. Address of each proposed tower site, including Tax Map section, block and lot number.

d. Site plan.

e. Decommissioning Plan, based on the criteria in this Article for WECS, including a security bond or cash for removal.

### C. Standards for Wind Measurement Towers

1. The distance between a Wind Measurement Tower and the property line shall be at least the total height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.

2. Special Use Permits for Wind Measurement Towers may be issued by the Zoning Board of Appeals for a period of up to two (2) years. Permits may be renewed if the facility is in compliance with the conditions of the Special Use Permit.

## IV. SMALL WIND ENERGY CONVERSION SYSTEMS

A. Purpose and Intent – The purpose of this Article is to provide for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy conversions systems and to protect the public health, safety, and community welfare.

B. Permitted Areas – Small Wind Energy Systems may be permitted in any zoning district upon issuance of a Special Use Permit.

### C. Applications

1. Applications for Small WECS Special Use Permits shall include:

a. Name, address, and telephone number of the applicant. If the applicant will be represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.

b. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

c. Address of each proposed tower site, including Tax Map section, block and lot number.

d. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

e. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

f. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

g. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.

h. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicated the color treatment of the systems' components and any visual screening incorporated into the project that is intended to lessen the systems' visual prominence.

D. Development Standards – All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other section of this Article that are not in conflict with the requirements in this section.

1. A system shall be located on a lot a minimum of one (1) acre in size, however, this requirement can be met by multiple owners submitted a joint application.

2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one (1) lot for purposes of this Article.

3. Small wind energy systems may be used primarily to reduce the on-site consumption of electricity.

4. Tower heights may be allowed as follows:

a. Sixty-five (65) feet or less on parcels between one (1) and five (5) acres.

b. One hundred twenty (120) feet on parcels of five (5) or more acres.

c. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11 of Title 14 of the Code of Federal Regulations regarding installations close to airports).

5. The maximum turbine power output is limited to 100kW.

6. The systems' tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.

7. The systems shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:

a. Shall not project above the top of ridgelines.

b. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.

c. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of this system.

11. At least one sign shall be posted on the tower at a height of five (5) feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

12. Tower shall be constructed to provide one (1) of the following means of access control, or other appropriate method of access:

a. Tower-climbing apparatus located no closer than twelve (12) feet from the ground.

b. A locked anti-climb device installed on the tower.

c. A locked, protective fence at least six (6) feet in height that encloses the tower.

13. Anchor points for guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.

14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

15. To prevent any harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least thirty (30) feet above the highest structure or tree within a two hundred fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provision of the Uniform Building Code and National Electric Code.

17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

E. Standards – A Small Wind Energy System shall have the following standards:

1. Setback requirements – A Small WECS shall not be located closer to a property line than one and a half (1 ½ ) times the total height of the facility.

2. Noise – Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed fifty (50) decibels (dBA), as measured at the closest neighboring inhabited dwelling.

F. Abandonment of Use

1. Small WECS which is not in use for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Zoning Board of Appeals.

2. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## V. MISCELLANEOUS

A. The Town of Cherry Creek Fee Schedule – The fees associated with establishing a Wind Overlay District, Special Use Permits, Wind Measurement Towers and renewals are set forth in the Town of Cherry Creek fee schedule. The status of these charges as refundable or nonrefundable is also determined in the fee schedule.

### B. Building Permits

1. Town of Cherry Creek has determined that the review of building and electrical permits for wind energy facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall reflect the increase in administrative cost plus the amount charged to the Town of Cherry Creek by any outside consultants employed by the Town of Cherry Creek to review the plans and inspect work. In the alternative, the Town of Cherry Creek and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town of Cherry Creek and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certification or conduct inspections as agreed by the parties.

2. The applicant shall prior to the receipt of the building permit demonstrate that the proposed facility meets the system reliability requirements of New York Independent System Operator, or provided proof that it has executed an interconnection agreement with the New York Independent System Operator and/or the applicable transmission owner.

C. Host Community Agreements – Nothing in this Article shall be read as limiting the ability of the Town of Cherry Creek to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineer and legal costs of any application review, including the review required by SEQRA.

D. The Amendment of Fees – The Town Board of the Town of Cherry Creek may amend the fee amount upon resolution after a properly noticed public hearing.

## **SECTION 625**

### **Small Scale Solar Energy Systems**

A. Purpose – The provisions of the Section shall be interpreted as providing minimum requirements for small-scale solar energy systems adopted for the purpose of promoting the health, safety, morals and general welfare of this community.

B. Intent – It is not intended by this Section to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of building or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this Section imposes a greater restriction upon the use of buildings or premises than is required by existing provision of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this Section shall control.

#### **C. Solar Energy Systems**

1. Installation of solar energy systems and equipment is encouraged on all preexisting structures; however, access to sunlight which is necessary therefore cannot be obtained through the provisions of this Section. The installation of a solar collector, whether attached to the main structure or as a detached accessory structure, shall require a building permit. Solar collectors are subject to the minimum setbacks, offsets and lot area coverage for whatever use district in which they are proposed to be installed. Height limitations for solar collectors in the Agricultural-Residential District shall be five (5) feet above the level of the permitted building height. Height limitations in all other use districts shall be in accordance with the limitations for signs in each use district. All solar collectors and their associated support elements shall be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migrations of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.

2. Other alternative natural energy conservation device shall be considered structures and shall require a building permit. All permit applications for such devices will be reviewed for compliance with applicable laws.

3. All solar energy systems located in the Agricultural-Residential District are only permitted to contain solar collectors located on rooftops of principal or accessory buildings. The solar collectors must be completely contained within the limits of the

building roof. All other equipment and components of the solar energy system shall be located within the rear yard only and are subject to setback for accessory structures.

D. More Restrictive Provisions to Prevail

1. Whenever the regulations made by this Section require width or yards or courts or require a lower height of building or less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than required in any other ordinance or regulation, the provisions of the regulations made by this Section shall govern.

2. Whenever the provisions of any other ordinance or regulation require a greater width or size of yards or courts or require a lower height of building or less number of stories or require a greater percentage of the lot to be left unoccupied or impose other higher standards than are required by the regulations of this Section, the provisions of such other ordinance or regulation shall govern.

**SECTION 626**                      **Commercial Solar Energy Production Systems**

A. Moratorium:

The construction of Commercial Solar Energy Production Systems shall be governed by Town Law No. 1 of 2022, adopted by the Town Board on January 10<sup>th</sup>, 2022. This Law titled "A Local Law Imposing a Temporary Moratorium on certain types of Solar Energy Uses" This Law imposes a one (1) year moratorium on certain solar production systems pending further review by the Board. Should the Moratorium expire, the following guidelines shall apply unless replaced by specific Town Law on this land use.

B. Definitions

Commercial Solar Energy Production System – an arrangement or combination of components installed upon land that utilize solar radiation to produce energy designed to provide electricity for on-site or off-site use pursuant to a power purchase agreement.

C. Use Regulations and Site Plan Review

Commercial Solar Energy Production System shall be permitted as a Use By Special Use Permit only and only after the Moratorium above has been lifted. In addition to the requirements set forth in this Section, all such and Special Use Permits uses shall be subject to the site plan review process in Section 1003, the project applicant shall provide the following documents, as deemed applicable by the Zoning Board of Appeals:

1. The commercial solar energy system shall be on a parcel of not less than five (5) acres.

2. All ground-mounted panels shall not exceed the height of eight feet (8') unless the applicant can demonstrate special circumstances exist which warrant exceeding

the eight feet (8') height requirement. The primary reason for the height restriction is to limit visibility of the structures from neighboring properties.

3. All mechanical equipment of commercial solar energy systems, including any structure for batteries or storage cells, are completely enclosed by a minimum eight foot (8') high fence with self-locking gate.

4. The total surface area of all ground-mounted and freestanding solar collectors, including solar photovoltaic cells, panels, and arrays, shall not exceed eighty percent (80%) of the total parcel area.

5. The installation of a vegetated perimeter buffer to provide year round screening of the system for adjacent properties.

6. All solar energy production systems are designed and located in order to prevent reflective glare toward any habitable buildings as well as streets and rights-of-way.

7. All on-site utility and transmission lines are, to the extent feasible, placed underground.

8. The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

9. The system is designed and situated to be compatible with the existing uses on adjacent and nearby properties.

10. Property lines and physical features, including roads, for the project site.

11. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

12. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector.

13. Utility Notification – No grid-intertie photovoltaic system shall be installed until evidence has been given to the Zoning Board of Appeals that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

14. Visual Impact – Reasonable efforts as determined by the Zoning Board of Appeals, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures.

15. Land Clearing, Soil Erosion and Habitat Impacts – Clearing of natural



vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or an otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.

16. Documentation of the major system components to be used, including the panels, mounting system and inverter.

17. Name, address, and contact information for proposed system installer.

18. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any.

19. The name, contact information and signature of any agents representing the project proponent.

20. Zoning district designation for the parcel(s) of land comprising the project site.

21. Any Special Use Permit approval granted under this Article shall have a term of twenty (20) years, commencing from the granting of the Special Use Permit, which may be extended for additional five (5) year terms upon application to the Town Board.

22. Abandonment/Decommissioning/Removal

a. Any commercial solar energy production system that is not operated for a continuous period of twenty-four (24) months shall be deemed abandoned. At that time, the owner of the commercial solar energy production system or the owner of the property where the commercial solar energy production system is located shall remove all components thereof within ninety (90) days of such deemed abandonment or will be in violation of this Section. In the case of a commercial solar energy production system on pre-existing structures, this provision shall apply to the commercial solar energy production system only. Additionally, the Town may recover such costs through the surety bond or escrow referred to in Section 626 C(1)(e).

b. This Section is enacted pursuant to Section 10 of the Municipal Home Rule Law to promote the public health, safety and general welfare of Town citizens through removal provisions to ensure the proper decommissioning of commercial solar energy production systems within the entire Town. The removal reduction provision of this Section shall supersede any inconsistent portions of the Town Law and govern the subject of removal of commercial solar energy production systems in this Section.

23. In approving a Special Use Permit, the Zoning Board of Appeals may waive or modify any of the above criteria if it finds that there is no detriment to public health, safety and welfare.

D. Decommissioning Plan, Fee Schedule for Commercial Solar Energy Site Plan Applications.

1. All applications for a commercial solar energy system shall be accompanied by a Decommissioning Plan to be implemented upon the abandonment and/or in conjunction with removal of the commercial solar energy system. Prior to removal of commercial solar energy system, a permit for removal activities shall be obtained from the Code Enforcement Officer. The Decommissioning Plan shall include the following provisions:

a. Restoration of the surface grade and soil after removal of aboveground structures and equipment.

b. Restoration of soil areas with native seed mixes, and/or plant species suitable to this area, which shall not include any invasive species.

c. Retention of access roads, fences, gates or buildings or buffer plantings, as required at the discretion of the Town.

d. The disposal of all solid and hazardous wastes shall be in accordance with all local, state, and federal waste disposal regulations.

e. An applicant for a commercial solar energy system may be required at the discretion of the Zoning Board of Appeals to provide a form of surety, either through escrow account, bond or otherwise at the time of the application to cover the cost of decommissioning and removal in the event the Town must remove the installation and remediate the landscape, in the amount and form deemed to be reasonable by the Town Attorney who may consult with an engineer. Such surety will not be required for Municipal or State owner facilities. The applicant for the facility shall submit a full inclusive estimate of the cost associated with removal prepared by a professional engineer. This requirement is separate and apart from the performance bond referred to above.

2. The fees for the building permit, site plan review and Zoning Board of Appeals application shall be set forth in the Town of Cherry Creek Fee Schedule.

## **SECTION 627**

### **Trash Storage in Residential Yards**

#### **A. Quantity Allowed**

1. Trash (defined in B. below), garbage, clothing, containers, appliances, furniture and other refuse are not permitted to be present in any concentration outside of structures unless contained in a large or small dumpster as specified below or street side in an area no greater than 100 square feet for pick up by sanitation contractors

2. Small Dumpsters – Trash originating from the parcel on which it is placed may be stored in a dumpster with a capacity of up to eight hundred (800) cubic feet. The dumpster shall be kept neat and clean in appearance. The area surrounding the dumpster will be kept clear of debris and trash. The dumpster will be placed in such a manner that it takes advantage of existing trees, shrubbery or fencing to screen the dumpster from the

view of neighbors or the street. The placement of the dumpsters shall in no way impede the emptying or servicing of the dumpster.

3. Large Dumpsters – Trash originating from the parcel on which it is placed shall be allowed to be stored temporarily in a dumpster with a capacity of greater than eight hundred (800) cubic feet. The dumpster will be allowed on the property for a period of sixty (60) days in a single calendar year. The presence of a dumpster on the parcel for a period exceeding sixty (60) days in a calendar year will require approval by the Town Code Enforcement Officer.

4. Trash originated from outside of the Town shall not be permitted to be dumped on any parcel within the Town.

B. Definition of Trash – Glass, scrap metals, salvage metals, rags, food, personal hygiene items, refuse, garbage, wastepaper, non-functional machines, furniture, appliances, or similar materials, etc., but not to include woodpiles, lumber, building materials, compost, used farm machinery.

C. Buffers

1. All new accumulations of trash created after the enactment of this Law shall be out of sight of highways and adjacent properties to the greatest degree possible. Additionally, new accumulations of trash shall be placed at least even with the front of the house and away from any parcel boundary or public roadways.

**SECTION 628**                      **Storage Containers**

A. Storage containers other than temporary storage containers may be installed as an accessory use in agricultural/residential districts (AR-1), business districts (B-1), and residential districts (R-1) by special use permit only and subject to the following minimum requirements:

1. The storage container shall be located to the rear or side of the principal building and meet a minimum fifty (50) foot setback requirement from rear and side lot lines and one hundred (100) feet from the front lot line measured from the right-of-way.

2. There shall be a maximum of one (1) container per lot.

3. Screening by using existing plants, trees, shrubs is required.

Additionally, the Zoning Board of Appeals may require the planting of additional natural vegetation or fencing to be erected to minimize adverse impacts to neighboring properties.

4. All advertising, signage and numbering will be removed from the storage container. No advertising on the storage container is permitted.

5. The storage containers are only permitted on a lot where a residence or permitted primary structure exists. The storage container will be only used as an accessory use to that residence or other primary structure on the lot. A storage container is not permitted when there is not a residence or existing primary

structure on the lot.

6. Semi trailers shall not be permitted

7. Storage containers shall be subject to applicable provisions in the New York State Building and Fire Code particularly with regard to ingress and egress from the storage container.

**B. Temporary Storage Container**

1. Use of such temporary containers shall be limited to no more than sixty (60) days in any calendar year. A temporary storage container is permitted anywhere in the Town of Cherry Creek without a Special Use Permit. The placement of temporary storage container shall be subject to the setback requirements for that district and shall be placed to minimize adverse impacts to neighbors.

**SECTION 629**

**Cannabis Dispensaries**

Pursuant to Town Law Number 1 of 2021 for the Town of Cherry Creek, adopted by the Town Board on October 11, 2021, no cannabis dispensaries or on site cannabis consumption establishments shall be permitted in the Town. This law, titled "A Local Law Enacting The Cannabis Dispensary and On-Site Cannabis Consumption Establishment Opt-Out" prohibits the construction or operation of establishments whose business it is to sell or consume cannabis products.

**ARTICLE VII  
ADMINISTRATION BY CODE ENFORCEMENT OFFICER**

**SECTION 701                      Enforcement**

This Law shall be enforced by the Code Enforcement Officer who shall be appointed by the Governing Body of the Town of Cherry Creek. No building permit or certificate of occupancy shall be issued by him or her except where there is compliance with all provisions of this Law.

Additionally, existing property or property use conditions at the time of adoption of this law shall not be “grandfathered” as compliant under this zoning regulation. Rather, landowners that are non compliant will be asked to submit applications for variances for consideration by the Town Code Enforcement Officer and the Zoning Board of Appeals for conditions that are in question at the time of adoption of this law. Variance applications may be accepted, accepted with conditions, or denied by the Town.

**SECTION 702                      Duties of Code Enforcement Officer**

It shall be the duty of the Code Enforcement Officer in connection with this Law to do the following:

- A. Make a record of nonconforming uses.
- B. Issue building permits and certificates of occupancy or refuse to issue the same and give the reasons for such refusal to the applicant.
- C. Keep a record of all applications for permits and a record of all permits issued with a notation of all special conditions involved.
- D. Receive all required fees and deposit them with the Town Clerk.
- E. Keep the Town Board and the Zoning Board of Appeals informed and advised of all matters, other than routine matters in connection with this Law.
- F. Submit such reports as may deem necessary.
- G. Whenever possible to advise and assist persons applying for building permits with the preparation of their applications.
- H. Assist in securing warrants and prosecution of violators of the provisions of this Law.
- I. Serve all notices that may be required to be served in connection with this Law.
- J. Make recommendations for keeping the Zoning Law and accompanying map up-to-date.

K. Inspect new construction or changes of use during and/or after construction or change in use to insure conformity with the provisions of this Law and other applicable laws.

## **SECTION 703**

### **Building Permits**

No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Code Enforcement Officer. No building permit shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any provision of this Law unless so granted by written approval of the Zoning Board of Appeals.

The application for a building permit shall be made of a form obtained from the Code Enforcement Officer. It shall include a statement of the materials to be used, an estimate of cost, the location, the proposed use, and the sanitation facilities to be provided (if any are needed). A copy of required Health Department permits must be attached to the building permit application.

Building permits shall be valid for a one (1) year period only; however, they may be extended for an additional one (1) year period with the approval of the Code Enforcement Officer. Within one (1) year from the date the building permit is granted the exterior of the structure shall be completed, backfilling, and rough grading will be accomplished, and no new building materials will be stored outside. Upon expiration of the one (1) year period a Use Variance will be required in order to not be in violation with the Zoning Law.

All applicants for building permits along with one (1) copy of a layout or plot plan drawn to scale and showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and accessory building or any buildings that are to be erected, the location of adjoining highway right-of-way lines, and such other information as may be necessary to determine and provide for the enforcement of this Law may be transmitted by the Code Enforcement Officer to the Zoning Board of Appeals for their review and recommendation. The sanitation, sewage, and waste disposal facilities shall comply with standards approved by the Chautauqua County and State Health Departments.

All applications for building permits for commercial buildings submitted to the Code Enforcement Officer must contain information detailing drainage and landscaping plans, off- street parking, off-street loading, and any other data the Zoning Board of Appeals deems necessary.

All applications shall be approved in writing by the Zoning Board of Appeals and a building permit shall then be granted by the Code Enforcement Officer after receipt of payment of the appropriate fee as specified in Section 704.

The Code Enforcement Officer may attempt to notify adjacent property owners when requests are filed for building permits on adjoining property, if in the opinion of the Code Enforcement Officer the proposed project is of such a nature to be controversial. Failure of such adjacent property owners to receive such notice, however, shall not be a basis for invalidating such a building permit, nor of contesting the actions of the Code Enforcement Officer,

Zoning Board of Appeals, or the Town Board in regard to the issuance or withholding of such permit.

**SECTION 704**                      **Schedule of Fees**

See Town Clerk for schedule of fees.

**SECTION 705**                      **Issuance of Appearance Tickets**

The Town of Cherry Creek Code Enforcement Officer shall have authority to issue an appearance ticket to persons for alleged Town of Cherry Creek Zoning Law Violations and New York State Building and Fire Code Violations as provided under Criminal Procedure Law Sections 150.10 and 150.70.



**ARTICLE VIII  
NONCONFORMING USES**

**SECTION 801                      Continuation**

The lawful use of any building or land existing at the time of the enactment of this Law may be continued although such use does not conform with the provisions of this Law.

**SECTION 802                      Unsafe Structures**

Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition with, and according to a special use permit from the Zoning Board of Appeals.

**SECTION 803                      Alterations**

A nonconforming building may not be structurally altered during its life to an extent exceeding an aggregate cost of fifty (50) percent of the assessed full value of the building unless said building is changed to a conforming use.

**SECTION 804                      Prior Approved Construction**

Nothing herein contained shall require any change in plan, construction, or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit.

**SECTION 805                      Restoration**

All lawful nonconforming uses which are damaged or destroyed by fire or other causes may be repaired, rebuilt, or reestablished if a building permit is applied for within six (6) months after such damage or destruction; however, the nonconforming use shall not be increased or extended beyond the extent to which it existed on the effective date of this Law.

**SECTION 806                      Abandonment**

Whenever a nonconforming use have been voluntarily discontinued for a period of one (1) year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this Law.

**SECTION 807                      Displacement**

No nonconforming use shall be extended to displace a conforming use.

**SECTION 808****District Change**

Whenever the boundaries of a district or zone shall be changed so as to transfer an area from one district or zone to another district or zone of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

**SECTION 809****Nonconforming Signs**

All nonconforming signs, billboards, commercial advertising structure and statutory, and supporting members, shall be completely removed from the premises not later than three (3) years from the effective date of this Law or amendment thereto. This provision for removal shall not apply to permissible types of signs which are improperly located on a lot or building.

**SECTION 810****Nonconforming Yard Changes**

An allowed use which is not in conformance with yard requirements (e.g., setback, etc.) may be removed and replaced with another structure (same use) which is more in compliance with the yard requirements without going through area variance procedures. The Code Enforcement Officer shall determine the applicability of this Section to specific cases.

**SECTION 811****Use Changes**

Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

A legal nonconforming use may be changed to another nonconforming use which is of such a character so as to be less a nuisance and more in conformance with the zoning law requirements. Once changed, the use would not be allowed to return to the original use. The Zoning Board of Appeals would make all determinations as to what new nonconforming uses would be allowable through the normal use variance procedure.

**ARTICLE IX  
ZONING BOARD OF APPEALS**

**SECTION 901                      Creation**

A Zoning Board of Appeals is hereby created. Said Board shall be appointed and function in accordance with enabling law. Said Board shall consist of five (5) Town residents. The Board may prescribe for its affairs.

**SECTION 902                      General Procedures**

The Zoning Board of Appeals shall act in strict accordance with procedure specified by law and by this Zoning Law. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the interpretation that is claimed, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted as the case may be. At least fifteen (15) days before the date of the hearing required by law on the application or appeal to the Zoning Board of Appeals, the secretary of said Board may at their discretion transmit to the Zoning Board of Appeals a copy of said application or appeal, and the Zoning Board of Appeals shall submit a report of such advisory opinion prior to the date of such hearing. Upon failure to submit such report, the Zoning Board of Appeals shall be deemed to have approved the application or appeal. Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Zoning Board of Appeals on the particular case.

**SECTION 903                      Interpretation**

The Zoning Board of Appeals shall have the power to interpret the meaning of this Zoning Law whenever called upon by the Town Board, Code Enforcement Officer or an aggrieved party who has been denied a building permit. This interpretation power shall include the determination of district boundary lines.

Additionally, existing property or property use conditions at the time of adoption of this law shall not be “grandfathered” as compliant under this zoning regulation. Rather, landowners that are non compliant with the new law will be asked to submit applications for variances for consideration by the Town Code Enforcement Officer and the Zoning Board of Appeals for conditions that are in question at the time of adoption of this law.

**SECTION 904                      Use & Area Variances**

A. Reasons for Variances – The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Law where literal interpretation would cause practical difficulties (Area Variance) or unnecessary hardships (Use Variance).

B. Applicability & Limitations – The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Code Enforcement Officer. The Zoning Board of Appeals may reverse, affirm, or modify the decision made by the Code Enforcement Officer. The Zoning Board of Appeals shall respond to written and signed

complaints or requests only. (A template/form for which shall be publicly available at the Town Hall)

The Zoning Board of Appeals has absolutely no power to amend the Zoning Law and must exercise great care to insure that its rulings do not in effect amend the Zoning Law.

C. Basis for Granting Area Variances – Area Variances provide relief of a dimensional nature, (e.g., lot shape or grade) and must be based on practical difficulty. The burden of proof is on the applicant and if relief is warranted it should be the minimum necessary.

The following five determinations must be considered in order to decide if “Practical Difficulty” is present:

1. How substantial the variation is in relation to the requirements of the Zoning Law.
2. The effect of the proposal on increased population density and governmental facilities (e.g., fire, water, etc.).
3. Whether a substantial change in the character of the neighborhood or a detrimental effect on adjoining properties would take place.
4. Whether the difficulty can be eliminated by some other reasonable alternatives other than a variance (e.g., add room to other side of house).
5. Will justice be served in allowing the variance.

The fact that the practical difficulty was self-imposed does not disqualify the applicant from being granted an Area Variance.

If a property owner will suffer significant economic injury by strict interpretation of the area standards and practical difficulties are present, then the Area Variance can only be denied based on health, safety or general welfare reasons.

D. Basis for Granting Use Variances – Use Variances provide relief to an applicant who is denied by the Code Enforcement Officer the right to use land or structures in a certain manner since the use is not listed as an allowable use in the Zoning Law. In order to be granted the Use Variance the applicant must prove that “Unnecessary Hardship” exists and this is accomplished by showing all of the following:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in the district. This does not mean that profits will not be maximized.
2. The use requested by the variance will not alter the essential character of the neighborhood, and be detrimental to properties in the vicinity.



**ARTICLE X  
PLANNING FUNCTIONS OF THE ZONING BOARD OF APPEALS**

**SECTION 1001**

Reserved.

**SECTION 1002**                    **Duties**

The Zoning Board of Appeals for the Town shall have the following duties with respect to this Zoning Law:

A. To investigate, study, and submit reports on all appeals and matters referred to it by the Code Enforcement Officer or Town Board.

B. To submit written reports within thirty (30) days after reference to it of any appeal or other matter unless the time shall be extended by the Code Enforcement Officer or Town Board making the reference.

C. To review and recommend applications for cluster residential developments prior to the issuance of Building Permit, Special Use Permit, or Occupancy Permit. Such site plans shall be submitted through the Code Enforcement Officer or the Zoning Board of Appeals at least ten (10) days prior to its next scheduled meeting and shall consist of the documentation required in Section 601.

D. To review and make recommendations on proposed Zoning Law amendments prior to action by the Town Board.

E. To issue Special Use Permits in accordance with Section 1103 for any of the uses for which this Zoning Law requires the obtaining of such permits.

**SECTION 1003**                    **Special Use Permits**

A. General Provisions – The special uses listed in this Zoning Law for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

B. Standards – The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. Operations in connection with any

special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration, or lights, than would be the operations of any permitted use.

In the granting of Special Use Permits, the Zoning Board of Appeals shall attach such conditions and safeguards as it deems appropriate under this Law.

The Zoning Board of Appeals shall include in their analysis of applications for Special Use Permits a consideration for the need of an appropriate buffer zone. If such barrier is deemed necessary then this condition will be including in the written decision and the Code Enforcement Officer shall insure that appropriate vegetation is planted within a reasonable time after completion of the project.

C. Special Standards Relating to Private Camps – Prior to the granting of a Special Use Permit for the utilization of land for a private camp, consideration of the following will be made by the Zoning Board of Appeals:

1. Size of lot – Minimum of ten (10) acres required.
2. Location of structures on the lot.
3. Type, size, and method of construction for any proposed structures. Not that, if a mobile home is proposed to be used, it must meet the minimum floor space requirements of Section 401C.
4. Buffer Zones – Existing or proposed.
5. Other requirements as deemed necessary by the Zoning Board of Appeals.

D. Procedures – The Zoning Board of Appeals shall act in strict accordance with procedure specified by law and by this Zoning Law with regard to public hearings, notices, publications, etc.

A plan for the proposed development of a site for designated special use shall be submitted with an application for a Special Use Permit, and such plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the Zoning Board of Appeals deems necessary.

E. Expiration – A Special Use Permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for more than one (1) year for any reason.

F. Existing Violations – No Special Use Permit shall be issued for a property where there is an existing violation of this Law.

G. Special Standards Relating to Communication Towers – The Zoning Board of Appeals may not grant a Special Use Permit for the erection, relocation, reconstruction or alteration of a communication tower unless in conformity with the regulations in Section 620 Communication Towers.

**SECTION 1004**                      **Mandatory Referrals**

General Municipal Law 239 l & m must be followed when issuing Special Use Permits. See Section 905 for the procedure to be followed.



**ARTICLE XI  
AMENDMENTS**

**SECTION 1101                    Procedure**

The Town Board may from time to time on its own motion or on petition, or on recommendation of the Zoning Board of Appeals, amend, supplement or repeal the regulations and provisions of this Law after public notice and hearing.

**SECTION 1102                    Mandatory Referral**

General Municipal Law 239 l & m must be followed when issuing Special Use Permits. See Section 905 for the procedure to be followed.

**SECTION 1103                    Referral to Zoning Board of Appeals**

Prior to acting on any Zoning Law or Zoning Map amendments, the Town Board shall advise the Zoning Board of Appeals of the proposed amendment.

The Zoning Board of Appeals shall have thirty (30) days in which to review the proposed amendment and return their recommendation to the Town Board. After the thirty (30) days has expired, the Town Board may act without receipt of a recommendation from the Zoning Board of Appeals.

**ARTICLE XII  
VIOLATIONS AND PENALTIES**

**SECTION 1201                      Violations**

Whenever a violation of this Law occurs, any person may file a complaint in regard hereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate.

However, the Town Board shall be responsible for insuring compliance with this Law when it is brought to their attention that a violation may exist, even though not formal complaint is filed.

**SECTION 1202                      Penalties**

Any violation of any provision of this Law by any person shall constitute a misdemeanor and shall be punishable by fine(s) and possibly imprisonment as per New York State Law.

Specifically, :

- First violation (occurrence): A first violation of this Law is hereby declared to be an offense, punishable by a fine not less than two hundred dollars (\$200.00) and not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six (6) months, or both.
- Second violation (occurrence): A second offense both of which were committed within a period of five (5) years, punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed six (6) months, or both.
- Third violation (occurrence): Upon conviction of a third subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both.

Each week's (7 consecutive calendar days) continued violation shall constitute a separate and additional occurrence and violation. This base penalty structure shall apply to all violations for which there is not a specified penalty in NYS Law or other Local Laws and regulations. All fees due in relation to fines shall be paid by cashiers check or cash to the Town Clerk. Failure to pay may result in fees being added to Town property taxes, property liens, additional fees for remediation performed by the Town regarding the non compliance, and/or legal action by the Town.

The Town Code Enforcement Officer and or Zoning Board of Appeals may, at their discretion, choose to provide a non-compliant party(ies) with grace periods (not to exceed 30 days) for compliance, or other accommodations to fit the incidence, severity of impact, or situation related to the violation.

**ARTICLE XIII  
LEGALITY**

**SECTION 1301      Conflicts**

In their interpretation and application, the provision of this Law shall be held to be minimum requirement, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this Law are at variance with the requirements of any other lawfully adopted rules, regulation, or ordinances, the most restrictive or that imposing the higher standards, shall govern.

**SECTION 1302      Separability**

The invalidity of any provision of this Law shall not invalidate any other part thereof.

**SECTION 1303      Repealer**

Any previously adopted Zoning Law or regulations of the Town of Cherry Creek, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

**SECTION 1304      Effect**

This Local Law shall take effect ten (10) days after the date of its publication and posting as required by Town Law and become effective June 1, 1979.

## **Part II**

# **Fire Prevention and Building Code Regulations**

Be it enacted by the Town Board of the Town of Cherry Creek in the County of Chautauqua, as follows:

### **SECTION 1. PURPOSE AND INTENT**

This local law provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, the Energy Code other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

### **SECTION 2. DEFINITIONS**

In this local law, the following terms shall have the meanings shown in this section:

"Assembly Area" shall mean an area in any building, or in any portion of a building, that is primarily used or intended to be used for gathering fifty or more persons for uses including, but not limited to, amusement, athletic, entertainment, social, or other recreational functions; patriotic, political, civic, educational, or religious functions; food or drink consumption; awaiting transportation; or similar purposes.

"Building Permit" shall mean a building permit, construction permit, demolition permit, or other permit that authorizes the performance of work. The term "Building Permit" shall also include a Building Permit which is renewed, amended, or extended pursuant to any provision of this local law.

"Certificate of Compliance" shall mean a document issued by the Town stating that work was done in compliance with approved construction documents and the Codes.

"Certificate of Occupancy" shall mean a document issued by the Town certifying that the building or structure, or portion thereof, complies with the approved construction documents that have been submitted to, and approved by the Town, and indicating that the building or structure, or portion thereof, is in a condition suitable for occupancy,

"Code Enforcement Officer" shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of section 3 of this local law.

"Code Enforcement Personnel" shall include the Code Enforcement Officer and all Inspectors.

"Codes" shall mean the Uniform Code and Energy Code.

"Energy Code" shall mean the New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law.

"FCNYS" shall mean the 2020 Fire Code of New York State as currently incorporated by reference in 19 NYCRR Part 1225.

"Fire Safety and Property Maintenance Inspection" shall mean an inspection performed to determine compliance with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference.

"Hazardous Production Materials" shall mean a solid, liquid, or gas associated with semiconductor manufacturing that has a degree-of-hazard rating in health, flammability, or instability of Class 3 or 4, as ranked by NFPA 704 (Standard Systems for Identification of the Hazards of Materials for Emergency Response), and which is used directly in research, laboratory, or production processes which have, as their end product, materials that are not hazardous.

"Inspector" shall mean an inspector appointed pursuant to subdivision (d) of *section 3* of this local law.

"Mobile Food Preparation Vehicles" shall mean vehicles that contain cooking equipment that produces smoke or grease-laden vapors for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles.

"Operating Permit" shall mean a permit issued pursuant to *section 10* of this local law. The term "Operating Permit" shall also include an Operating Permit which is renewed, amended, or extended pursuant to any provision of this local law.

"Order to Remedy" shall mean an order issued by the Code Enforcement Officer pursuant to subdivision

(a) of *section 17* of this local law.

"Permit Holder" shall mean the Person to whom a Building Permit has been issued.

"Person" shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

"PMCNYS" shall mean the 2020 Property Maintenance Code of New York State as currently incorporated by reference in 19 NYCRR Part 1226.

"RCNYS" shall mean the 2020 Residential Code of New York State as currently incorporated by reference in 19 NYCRR Part 1220.

"Repair" shall mean the reconstruction, replacement, or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

"Stop Work Order" shall mean an order issued pursuant to *section 6* of this local law.

"Sugarhouse" shall mean a building used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar.

"Temporary Certificate of Occupancy" shall mean a certificate issued pursuant to subdivision

(d) of section 7 of this local law.

"Uniform Code" shall mean the New York State Uniform Fire Prevention and Building Code, Subchapter A of Chapter XXXIII of Title 19 of the NYCRC, adopted pursuant to Article 18 of the Executive Law,

"Town" shall mean the Town of Cherry Creek

### SECTION 3. CODE ENFORCEMENT OFFICER AND INSPECTORS

(a) The Office of Code Enforcement Officer is hereby created. The Code Enforcement officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, and this local law. The Code Enforcement Officer shall have the following powers and duties:

- (1) to receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates of Occupancy, and Operating *Permits*, and the plans, specifications, and construction documents submitted with such applications;
- (2) upon approval of such applications, to issue Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates of Occupancy, and Operating Permits, and to include in terms and conditions as the Code Enforcement Officer may determine to be appropriate Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates of Occupancy, and Operating Permits;
- (3) to conduct construction inspections; inspections to be made prior to the issuance of Certificates of Occupancy, Certificates of Compliance, Temporary Certificates of Occupancy, and Operating Permits; fire safety and property maintenance inspections; inspections incidental to the investigation of complaints; and all other inspections required or permitted under any provision of this local law;
- (4) to issue Stop Work Orders;
- (5) to review and investigate complaints;
- (6) to issue orders pursuant to subdivision (a) of section 17 (Violations) of this local law;
- (7) to maintain records;
- (8) to collect fees as set by the Town Board of this Town;
- (9) to pursue administrative enforcement actions and proceedings;
- (10) in consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code, and this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code, or this local law; and
- (11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this local law.

(b) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by *law*, obtain such basic training, in-service training, advanced in-service training, and other training as

required by the Town.

(c) State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.

(d) In the event that the Code Enforcement Officer is unable to serve as such for any reason, another individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer, The Acting Code Enforcement Officer shall, during the term of their appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(e) One or more Inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this *local* law. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.

(f) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board of this Town.

#### **SECTION 4. BUILDING PERMITS**

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation, or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney, or flue in any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Town.

(b) Exemptions. No Building Permit shall be required for work in any of the following categories:

- (1) construction of temporary sets and scenery associated with motion picture, television, and theater uses;
- (2) installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) installation of partitions or movable cases less than 5'-9" in height;
- (4) painting, wallpapering, tiling, carpeting, or other similar finish work;



- (5) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (6) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

## SECTION 5. CONSTRUCTION INSPECTIONS

(a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:

- (1) work site prior to the issuance of a Building Permit;
- (2) footing and foundation;
- (3) preparation for concrete slab;
- (4) framing;
- (5) structural, electrical, plumbing, mechanical, fire-protection, and other similar service systems of the building;
- (6) fire resistant construction;
- (7) fire resistant penetrations;
- (8) solid fuel burning heating appliances, chimneys, flues, or gas vents;
- (9) inspections required to demonstrate Energy Code compliance, including but not limited to insulation, fenestration, air leakage, *system* controls, mechanical equipment size, and, where required, minimum fan efficiencies, programmable thermostats, energy recovery, whole-house ventilation, plumbing heat traps, and high-performance lighting and controls;
- (10) installation, connection, and *assembly* of factor manufactured buildings and manufactured homes; and
- (11) a final inspection after all work authorized by the Building Permit has been completed.

(c) Remote inspections. At the discretion of the Code Enforcement Officer or Inspector authorized to perform construction inspections, a remote inspection may be

performed in lieu of an in-person inspection when, in the opinion of the Code Enforcement Officer or such authorized Inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or by such authorized Inspector that the elements of the construction process conform with the applicable requirements of the Uniform Code and Energy Code. Should a remote inspection not afford the Code Enforcement Officer or such authorized Inspector sufficient information to make a determination, an in-person inspection shall be performed.

(d) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to the manner in which the work fails to comply with the Uniform Code or Energy Code, including a citation to the specific code provision or provisions that have not been met. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(e) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

## **SECTION 6 STOP WORK ORDERS.**

(a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

(1) any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(2) any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(3) any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

(b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(c) Service of stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by certified; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(d) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder, and any other Person performing, taking part in, or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order, other than work expressly authorized by the Code Enforcement Officer to correct the reason for issuing the Stop Work Order.

(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 17 (Violations) of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

## **SECTION 7. CERTIFICATES OF OCCUPANCY AND CERTIFICATES OF COMPLIANCE**

(a) Certificates of Occupancy and Certificates of Compliance required. A Certificate of Occupancy or Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy or Certificate of Compliance.

(b) Issuance of Certificates of Occupancy and Certificates of Compliance. The Code Enforcement Officer shall issue a Certificate of Occupancy or Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure, or work prior to the issuance of a Certificate of Occupancy or Certificate of Compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy or Certificate of Compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy or Certificate of

Compliance:

- (1) a written statement of structural observations and/or a final report of special inspections,
- (2) flood hazard certifications,
- (3) a written statement of the results of tests performed to show compliance with the Energy Code, and where applicable, the affixation of the appropriate seals, insignias, and manufacturer's data plates as required for factory manufactured buildings and/or manufactured homes.

(c) Contents of Certificates of Occupancy and Certificates of Compliance. A Certificate of Occupancy or Certificate of Compliance shall contain the following information:

- (1) the Building Permit number, if any;
- (2) the date of issuance of the Building Permit, if any;
- (3) the name (if any), address and tax map number of the property;
- (4) if the Certificate of Occupancy or Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy or Certificate of Compliance is issued;
- (5) the use and occupancy classification of the structure;
- (6) the type of construction of the structure;
- (7) the occupant load of the assembly areas in the structure, if any;
- (8) any special conditions imposed in connection with the issuance of the Building Permit; and
- (9) the signature of the Code Enforcement Officer issuing the Certificate of Occupancy or Certificate of Compliance and the date of issuance.

(d) Temporary Certificate of Occupancy, The Code Enforcement Officer shall be permitted to issue a Temporary Certificate of Occupancy allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate of Occupancy unless the Code Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate of Occupancy, may be occupied safely, (2) that any required fire and life safety components, such as fire protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms are installed and operational, and (3) that all required means of egress from the structure have been provided. The Code Enforcement Officer may include in a Temporary Certificate of Occupancy such terms and conditions as he or she deems necessary or appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure. A Temporary Certificate of

Occupancy shall be effective *for a* period of time, which shall be no *less* than 3 months and no *more* than 6 months which shall be determined at the sole discretion of the Code Enforcement Officer and specified In the Temporary Certificate of Occupancy. During the specified period of effectiveness of the Temporary Certificate of Occupancy, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(e) Revocation or suspension of certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy, Certification of Compliance, or a Temporary Certificate of Occupancy was issued in error or on the basis of incorrect information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend. such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 *o1* this local law must be paid at the time of submission of an application for a Certificate of Occupancy, Certificate of Compliance, or for Temporary Certificate of Occupancy.

#### **SECTION 8. NOTIFICATION REGARDING FIRE OR EXPLOSION**

The chief of any fire department providing firefighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney, or gas vent.

#### **SECTION 9. UNSAFE BUILDINGS, STRUCTURES, AND EQUIPMENT AND CONDITIONS OF IMMINENT DANGER**

Unsafe buildings, structures, and equipment and conditions of imminent danger in this Town shall be identified and addressed in accordance with the procedures established by Section 611 of the Town Zoning Code., Buildings, Unsafe, of this Code, as now in effect or as hereafter amended from time to time.

#### **SECTION 10. OPERATING PERMITS.**

(a) Operation Permits required. Operating Permits shall be required for conducting any process or activity or for operating any type of building, structure, or facility listed below:

(i) manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter S0 of the FCNYS;

(ii) buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS as follows:

(i) Chapter 22, "Combustible Dust-Producing Operations." Facilities where the operation produces combustible dust;

- (ii) Chapter 24, "Flammable Finishes." Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
- (iii) Chapter 25, "Fruit and Crop Ripening." Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
- (iv) Chapter 26, "Fumigation and Insecticidal Fogging." Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal logging performed by the occupant of a detached one-family dwelling;
- (v) Chapter 31, "Tents, Temporary Special Event Structures, and Other Membrane Structures." Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;
- (vi) Chapter 32, "High-Piled Combustible Storage." High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
- (vii) Chapter 34, "Tire Rebuilding and Tire Storage." Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire byproducts or operating a tire rebuilding plant;
- (viii) Chapter 3S, "Welding and Other Hot Work." Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a detached one- or two-family dwelling;
- (ix) Chapter 40, "Sugarhouse Alternative Activity Provisions." Conducting an alternative activity at a sugarhouse;
- (x) Chapter 56, "Explosives and Fireworks." Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials except the outdoor use of sparkling devices as defined by Penal Law section 270;
- (xi) Section 307, "Open Burning, Recreational Fires and Portable Outdoor Fireplaces." Conducting open burning, not including recreational fires and portable outdoor fireplaces;
- (xii) Section 308, "Open Flames." Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies; and
- (xiii) Section 319, "Mobile Food Preparation Vehicles." Operating a mobile food preparation vehicle in accordance with the permitting requirements or State laws as now in effect or as hereafter amended

from time to time.

(3) energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in section R327.5.

of

the RCNYS.

(4) " buildings containing one or more assembly areas;

(5) outdoor events where the planned attendance exceeds 1,000 *persons*;

(6) facilities that store, handle or use hazardous production materials;

(7) parking garages as defined in subdivision (a) of section 13 of this local law;

(8) buildings whose use or occupancy classification may pose a substantial

potential

hazard to public safety, as determined by resolution adopted by the Town Board of this Town and

(9) other processes or activities or for operating any type of building, structure, or facility as determined by resolution adopted by the Town Board of this Town. Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

(b) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code

(c) Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

(d) This subdivision is intentionally omitted.

(e) Inspections. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the subject *premises* prior to the issuance of an Operating Permit. Such inspections shall be performed either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer, the remote inspection *can* be performed to the *same* level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or Inspector authorized by the Code Enforcement Officer that the premises conform with the applicable requirements of the Uniform Code and the code

enforcement program. Should a remote inspection not afford the Town sufficient information to make a determination, an in-person inspection shall be performed. After inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the manner in which the premises fail to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.

(f) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in their discretion, issue a single Operating Permit to apply to all such activities.

(g) Duration of Operating Permits. Operating permits shall be issued for a specified period of time consistent with local conditions, but in no event to exceed as follows:

- (1) 60 days for tents, special event structures, and other membrane structures;
- (2) 120 days for alternative activities at a sugarhouse;
- (3) 3 years for the activities, structures, and operations determined per paragraph (9) of subdivision (a) of this section, and
- (4) 1 year for all other activities, structures, and operations identified in subdivision (a) of this section.

The effective period of each Operating Permit shall be specified In the Operating Permit. An Operating Permit may be reissued or renewed *upon* application *to* the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.

(h) Revocation or suspension of Operating Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

(i) Fee. The fee specified in or determined in accordance with the provisions set forth in section 1s (Fees) of this local law must be paid at the time submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

## **SECTION 11. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS**

(a) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

- (1) at least once every 12 months for buildings which contain an assembly area;



(2) at least once every 12 months for public and private schools and colleges, including any buildings of such schools or colleges containing classrooms, dormitories, fraternities, sororities, laboratories, physical education, dining, or recreational facilities; and

(3) at least once every 36 months for multiple dwellings and all nonresidential occupancies.

(b) Remote inspections. At the discretion of the Code Enforcement Officer or Inspector authorized to perform fire safety and property maintenance inspections, a remote inspection may be performed in lieu of in-person inspections when, in the opinion of the Code Enforcement Officer or such authorized Inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or such authorized Inspector that the premises conform with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and *the* publications incorporated therein by reference. Should a remote inspection not afford the Code Enforcement Officer or such authorized Inspector sufficient information to make a determination, an in-person inspection shall be performed.

(c) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector authorized to perform fire safety and property maintenance inspections at any time upon:

(1) the request of the owner of the property to be inspected or an authorized agent of such owner;

(2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or

(3) receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

(4) observation by the Town Code Enforcement Officer or other Town Officials from a public road or space provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(d) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit, or impair the powers, duties and responsibilities of the

New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator or other authorized entity under Executive Law section 156-e. and Education Law section 807-b.

Notwithstanding any other provision of this section to the contrary, the Code Enforcement Officer may accept an inspection performed by the Office of Fire Prevention and Control or other authorized entity pursuant to sections 807-a and 807-b of the Education Law and/or section 156-e of the Executive Law, in lieu of a fire safety and property maintenance inspection performed by the Code Enforcement Officer or by an Inspector, provided that:

- (1) the Code Enforcement Officer is satisfied that the individual performing such inspection satisfies the requirements set forth in 19 NYCRR section 1203.2(e);
- (2) the Code Enforcement Officer is satisfied that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;
- (3) such inspections are performed no less frequently than once a year;
- (4) a true and complete copy of the report of each such inspection is provided to the Code Enforcement Officer; and
- (5) upon receipt of each such report, the Code Enforcement Officer takes the appropriate action prescribed by section 17 (Violations) of this local law.]

(e) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall *not* apply to inspections performed by OFPC.

## **SECTION 12. COMPLAINTS**

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law, ordinance, or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

(a) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

(b) if a violation is found to exist, providing the owner of the affected property and any

other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 17 (Violations) of this local law;

(c) if appropriate, issuing a Stop Work Order;

(d) if a violation which was found to exist is abated or corrected, performing an inspection to ensure that *the* violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

### **SECTION 13. CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA.**

(a) The Code Enforcement Officer shall determine the climatic and geographic design criteria for buildings and structures constructed within this Town as required by the Uniform Code. Such determinations shall be made in the manner specified in the Uniform Code using, where applicable, the maps, charts, and other information provided in the Uniform Code. The criteria to be so determined shall include but shall not necessarily be limited to, the following:

(1) design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termite; winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;

(2) heating and cooling equipment design criteria for structures within the scope of the RCNYS. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and

(3) flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:

(i) the accompanying Flood Insurance Rate Map (FIRM);

(ii) Flood Boundary and Floodway Map (FBFM); and

(iii) Related supporting data along with any revisions thereto.

(b) The Code Enforcement Officer shall prepare a written record of the climatic and geographic design criteria determined pursuant to subdivision (a) of this section, shall maintain such record within the office of the Code Enforcement Officer, and shall make such record readily available to the public.

### **SECTION 14 RECORD KEEPING.**

(a) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

(1) all applications received, reviewed and approved or denied;

(2) all plans, specifications and construction documents approved;

(3) all Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;

(4) all inspections and tests performed;

(5) all statements and reports issued;

(6) all complaints received;

(7) all investigations conducted;

(8) all condition assessment reports received;

(9) all fees charged and collected; and

(10) all other features and activities specified in or contemplated by sections 4 through 14, inclusive, of this local law.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

## **SECTION 15. PROGRAM REVIEW AND REPORTING**

(a) The Code Enforcement Officer shall annually submit to Town Board of this Town a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 14 (Record Keeping) of this local law and a report and summary of all appeals or litigation pending or concluded.

(b) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code,

(c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, true and complete copies of the records and related materials this Town is required to maintain; true and complete copies of such portion of such records and related materials as may be requested by the Department of State; and/or such excerpts, summaries, tabulations, statistics, and other information and accounts of its activities in connection with administration and enforcement of the Uniform Code and/or Energy Code as may be requested by the Department of State.

## **SECTION 16: VIOLATIONS**

(a) Orders to Remedy. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or

premises in violation of the Uniform Code, the Energy Code, or this local law. An Order to Remedy shall be in writing; shall be dated and signed by the Code Enforcement Officer; shall specify the condition or activity that violates the Uniform Code, the Energy Code, or

this local law; shall specify the provision or provisions of the *Uniform Code*, the Energy Code, or this local law which is/are violated by *the* specified condition or activity; and shall include a statement substantially similar to the following:

***"The person or entity served with this Order to Remedy must completely remedy each violation described in this Order to Remedy by [specify date], which is thirty (30) days after the date of this Order to Remedy."***

The Order to Remedy may include provisions ordering the person or entity served with such Order to Remedy (1) to begin to remedy the violations described in the Order to Remedy immediately, or within some other specified period of time which may be less than thirty (30) days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within thirty (30) days of the date of such Order to Remedy; and/or (2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist). which are authorized by this local law or by any other applicable statute, regulation, rule, local law or ordinance, and which the Code Enforcement Officer may deem appropriate, during the period while such violations are being remedied. The Code Enforcement Officer shall cause the Order to Remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail within five (5) days after the date of the Order to Remedy. The Code Enforcement Officer shall be permitted, but not required, to cause the Order to Remedy, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail within five (5) days after the date of the Order to Remedy; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(c) Penalties. In addition to such other penalties as may be prescribed by State law,

(1) any Person who violates any provision of this local law or any term, condition, or provision of any Building Permit, Certificate of Occupancy, Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be punishable by a fine of not more than \$1,000.00 per day of violation, or imprisonment not exceeding 15 days or both;

and

(2) any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, Certificate of

Occupancy, Certificate of Compliance, **Temporary** Certificate, Stop Work

Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to pay a civil penalty of not more than \$1,000.00 for each day or part thereof during which such violation continues. The civil penalties provided by this paragraph shall be recoverable in an action instituted in the name of this Town.

(d) Injunctive Relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, Certificate of Occupancy, Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit, Order to Remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Order to Remedy or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board of this Town.

(e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any

(f) remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty *specified* in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

## **SECTION 17 FEES**

A fee schedule shall be established by resolution of the Town Board of this Town. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

## **SECTION 18 INTERMUNICIPAL AGREEMENTS**

The Town Board of this Town may, by resolution, authorize the Supervisor of this Town to enter into an agreement, in the name of this Town, with other governments to carry out the terms of this local law, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

## **SECTION 19. PARTIAL INVALIDITY**

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

## **SECTION 20. EFFECTIVE DATE**

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.